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ERISA Litigation

Jury Trials in the ERISA Context: An Anomaly or a Trend?

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It has long been the case that courts hold claims under the Employee Retirement Income Security Act of 1974 (ERISA) for alleged breaches of fiduciary duty are generally not entitled to a jury trial. These claims are equitable rather than legal in nature, and so typically require a bench trial, whereas claims seeking legal relief may be tried by a jury.

Recently, however, a court in the U.S. District Court for the District of Connecticut joined the U.S. District Court for the Southern District of New York to buck the weight of authority and allow for a jury trial for at least some ERISA claims.¹ These cases raise the question of whether there has been a meaningful shift in how courts view fiduciary breach claims or whether these cases are outliers, and why.

I. LEGAL BACKGROUND

Under Federal Rule of Civil Procedure 39, where a party has properly demanded a trial by jury, the trial shall be by jury on all issues demanded, unless “the court, on motion or its own finds that on some or all of those issues there is no federal right to a jury trial.”² Courts will look first to the language of the federal statute at issue to determine whether the parties are entitled to a jury trial.³ If the statute is silent on that question, courts then consider whether the right to a jury is inherent to the plaintiff’s claim by virtue of the Seventh Amendment.⁴

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The Seventh Amendment sets forth 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, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.”⁵ The Seventh Amendment applies to actions enforcing statutory rights and requires a jury trial upon demand if the statute creates legal – rather than equitable – rights and remedies.⁶

Courts assessing whether a statute creates legal rights and remedies, as opposed to equitable ones, apply a two-step test.⁷ They (1) “compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity,” and (2) “examine the remedy sought and determine whether it is legal or equitable in nature.”⁸ The second factor is considered more important.⁹

Before 2002, courts applying these rules in the ERISA context near uniformly ruled that plaintiffs bringing Section 502(a)(2) claims were not entitled to a jury trial. But in 2002, the Supreme Court’s opinion in *Great-West Life & Annuity Insurance Co. v. Knudson*,¹⁰ created some uncertainty. *Great-West* held that actions brought under ERISA seeking restitution may be legal, rather than equitable, in nature when the plaintiff seeks to impose “merely personal liability upon the defendant to pay a sum of money,” rather than seeking restitution to “restore to the plaintiff particular funds or property in the defendant’s possession,” which would be equitable relief.¹¹

Almost ten years after *Great-West*, the Supreme Court further clarified the meaning of “equitable relief” under ERISA in *CIGNA Corp. v. Amara*.¹² In *Amara*, which involved claims against fiduciaries, the Supreme Court explained that monetary remedies requiring breaching fiduciaries to make the plan whole or to disgorge profits constitute “equitable relief” because they are analogous to the remedies that have been traditionally available in equity courts against trustees who breached their fiduciary duties.¹³

In the wake of *Great-West* and *Amara*, the vast majority of courts have applied the two-step test to hold that there is no right to a jury trial in ERISA actions seeking monetary damages.¹⁴ In general, these courts have concluded that relief in the form of monetary compensation for a loss resulting from a breach of fiduciary duty is equitable in nature, pointing to *Amara*’s recognition that “prior to the merger of law and equity this kind of monetary remedy against a trustee, sometimes called a ‘surcharge,’ was exclusively equitable.”¹⁵

II. GARTHWAIT V. EVERSOURCE ENERGY COMPANY

Despite this great weight of authority, a federal judge in Connecticut recently declined to strike a plaintiff class’s demand for a jury trial in an ERISA 401(k) class action, joining one other district court from within the Second Circuit that issued a similar decision in 2018.

In the more recent case, *Garthwait v. Eversource Energy Company*,¹⁶ a class of former and current plan participants sued Eversource and its Plan fiduciaries, seeking to recover plan losses caused by alleged breaches of fiduciary duty and requesting other equitable or remedial relief. Plaintiffs demanded a jury trial for all claims, and defendants moved to strike, arguing that neither ERISA nor the Seventh Amendment provide a right to a jury trial for fiduciary breach claims. Plaintiffs responded that the relief they sought was legal, rather than equitable, in nature because it demanded compensation from the defendants' general assets.

Judge Janet C. Hall of the U.S. District Court for the District of Connecticut granted defendants' motion to strike in part and denied it in part. Judge Hall held that breach of fiduciary duty claims were equitable in 18th-century England, but she weighed the second prong of the test more heavily. She concluded that the plaintiffs' demand for Eversource to "make good" any losses caused by the alleged breach of fiduciary duty could be submitted to a jury, finding that this relief was legal, rather than equitable, in nature.

The *Eversource* court relied on language from *Great-West* and reasoned that the Eversource defendants were not alleged to have possessed the funds that plaintiffs demanded and thus the relief sought sounded in law.¹⁷ Judge Hall also cited *Pereira v. Farace*, where the U.S. Court of Appeals for the Second Circuit applied *Great-West* to hold that a demand for compensatory damages for breach of fiduciary duty outside the ERISA context sought legal rather than equitable relief.¹⁸

In addition, Judge Hall looked to another district court case from within the Second Circuit, *Cunningham v. Cornell University*, to decline to strike the plaintiffs' jury demand in part.¹⁹ The *Cunningham* court had also analyzed *Great-West* and *Pereira* and held that, although equitable relief "predominate[d]" the operative complaint, some requested relief asked the defendants to "make good" the plan with funds that had never been paid to the defendants, making it legal relief for compensatory damages.²⁰ The court concluded that some, but not all, of the plaintiffs' claims could be tried to a jury.²¹ The parties later settled.

Following the *Eversource* decision, Judge Hall also denied Eversource's request to immediately appeal its decision to the Second Circuit.²² The *Eversource* parties filed a notice of settlement within the month.²³

III. EVERSOURCE – ANOMALY OR TREND?

Despite judicial consensus that ERISA fiduciary claims sound in equity, it seems that artfully pleading requested relief that looks like restitution or compensatory damages may occasionally suffice to overcome a motion to strike a jury demand, at least for some claims in the Second Circuit for now. However, it far from clear that *Eversource* reflects a meaningful shift for courts evaluating jury demands in ERISA suits.

For example, while other federal cases have not yet engaged with *Eversource's* analysis, cases discussing *Cunningham* emphasize that its impact is likely limited to the Second Circuit because of that circuit's unique precedent.²⁴ In one case, *Ramos v. Banner Health*, the United States District Court for Colorado emphasized that *Cunningham* expressly justified its holding as an inevitable extension of the Second Circuit's interpretation of *Great West* in *Pereira*.²⁵ Indeed, *Cunningham* noted that "[t]he *Pereira* court may have over-read *Great West*. . . . But unless and until the case is overruled or clear Supreme Court precedent intervenes, this Court must follow it."²⁶ *Eversource* likewise framed itself as an inevitable application of *Pereira*, which itself may be on shaky ground.²⁷

Given these criticisms of *Cunningham*, which, by extension, would seem to also apply to *Eversource*, more courts may have to weigh in to determine whether any notable trend emerges or whether, for the reasons discussed above, these cases remain outliers.

However, until the Second Circuit steps in to clarify, plaintiffs in 401(k) class actions are likely to continue demanding restitution in the form of monetary compensation and to invoke *Eversource* and *Cunningham*, even in other circuits. Defendants, therefore, will need to ready to respond to such demands in ERISA suits.

In addition, in the pre-litigation context, Plan administrators and ERISA litigators should consider whether there are other steps that can be taken to reduce the risk of having such claims tried before a jury. For example, plans may want to draft or amend plan documents to avoid the uncertainty of the Second Circuit by including a venue provision requiring litigation elsewhere. Courts have generally upheld the inclusion of such provisions, notwithstanding ERISA's broad statutory venue provision.²⁸

Plans might also consider including a carefully crafted arbitration clause within plan documents. However, as we have discussed in prior articles, the law around the enforceability of arbitration provisions in all contexts is not yet fully settled.²⁹

Obviously, there are a variety of legal and practical considerations that must be weighed in deciding whether to include such provisions in a benefit plan. But given the possible risks of having to try an ERISA claim to a jury, plan administrators are advised to weigh the pros and cons of these options before they find themselves in litigation that includes a jury demand.

Notes

1. *Garthwait v. Eversource Energy Co.*, No. 20-cv-00902, 2022 WL 17484817 (D. Conn. Dec. 7, 2022), certificate of appealability denied, No. 20-cv-00902, 2023 WL 371036 (D. Conn. Jan. 24, 2023). See also *Cunningham v. Cornell Univ.*, No. 16-cv-6525, 2018 WL 4279466 (S.D.N.Y. Sept. 6, 2018).

2. Fed. R. Civ. P. Rule 39(a).

3. See e.g., *Brown v. Sandimo Materials*, 250 F.3d 120, 126 (2d Cir. 2001).
4. *Id.*
5. U.S. Const. amend. VII.
6. *Curtis v. Loether*, 415 U.S. 189, 194 (1974).
7. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989).
8. *Id.*
9. *Id.*
10. 534 U.S. 204 (2002).
11. *Id.* at 213–214.
12. 563 U.S. 421 (2011).
13. *Id.* at 439–42.
14. See, e.g., *Tracey v. Massachusetts Inst. of Tech.*, 395 F. Supp. 3d 150 (D. Mass. 2019); *Ramos v. Banner Health*, No. 15-cv-2556, 2019 WL 1558069 (D. Colo. Apr. 10, 2019); *Bauer-Ramazani v. Teachers Ins. & Annuity Ass’n of Am.-Coll. Ret. & Equities Fund*, No. 09-cv-190, 2013 WL 6189802 (D. Vt. Nov. 27, 2013); *Smith v. State Farm Grp. Long Term Disability Plan for U.S. Emps.*, No. 12-cv-9210, 2013 WL 4538516 (N.D. Ill. Aug. 27, 2013).
15. See, e.g., *Bauer-Ramazani*, 2013 WL 6189802 at *11 (quoting *Amara*, 563 U.S. at 442).
16. 2022 WL 17484817.
17. *Id.* at *2. See also *Hellman v. Cataldo*, No. 12-cv-02177, 2013 WL 4482889 (E.D. Mo. Aug. 20, 2013) (denying defendants’ motion to strike plaintiff’s jury demand, finding that the remedy plaintiff sought – damages as restitution for losses to the plan and their retirement benefits – were legal rather than equitable in nature).
18. *Eversource*, 2022 WL 17484817 at *3–4 (discussing *Pereira v. Farace*, 413 F.3d 330 (2d Cir. 2005)).
19. *Eversource*, 2022 WL 17484817 at *3–4 (discussing *Cunningham*, 2018 WL 4279466 at *3).
20. 2018 WL 4279466 at *2–*3.
21. *Id.*
22. *Garthwait v. Eversource Energy Co.*, No. 20-cv-00902, ECF No. 174 (D. Conn. Jan. 24, 2023).
23. *Id.* at ECF No. 184 (D. Conn. Jan. 31, 2023).
24. See, e.g., *Williams v. Centerra Grp., LLC*, 579 F. Supp. 3d 778, 785 (D.S.C. 2022); *Tracey*, 395 F. Supp. 3d at 154.
25. 2019 WL 1558069 at *4 (“*Cunningham* is not as persuasive as Plaintiffs contend. . . . *Cunningham* relied heavily on the Second Circuit’s interpretation of *Great-West* in *Pereira v. Farace* and explicitly acknowledged that “[t]he *Pereira* court may have over-read *Great-West* in applying its dictum to the issue of the right to trial by jury under the Seventh Amendment.”).
26. 2018 WL 4279466 at *4.
27. 2022 WL 17484817 at *4.

28. See *Feather v. SSM Health Care*, 216 F. Supp. 3d 934, 940–41 (S.D. Ill. 2016) (noting that the vast majority of federal district courts have held forum-selection clauses in an ERISA plan to be enforceable and collecting cases).

29. For further insight on the arbitration of ERISA claims, please refer to previous ERISA Litigation articles in this Journal: Joseph J. Torres and Margaret Hlousek, *Arbitration of ERISA Claims: Courts Grapple with Competing Considerations*, Vol. 47 No. 1 Summer 2021, and Joseph J. Torres, *Arbitration of ERISA Claims Part II: Courts Continue to Grapple with Competing Considerations*, Vol. 47 No. 4, Spring 2022.

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