Employee Benefits: ERISA Enhanced Benefit Claims and the Seventh Amendment: No Common Ground in the Tenth Circuit--

Adams v. Cyprus Amax Minerals Co.

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I. Introduction

In Adams v. Cyprus Amax Minerals Co.,¹ the Tenth Circuit reversed a district court decision denying the defendants' motion to strike the plaintiffs' demand for a jury trial. The plaintiffs sued under the Employee Retirement Income Security Act (ERISA) for enhanced severance packages — a benefit package giving greater monetary and health benefits than an alternative severance package.² In deciding the Adams case, the Tenth Circuit joined the vast majority of other circuits in finding that plaintiffs under ERISA are not entitled to a jury trial.³ This note will analyze whether the right to a jury trial should exist for ERISA enhanced benefit claims. First, this note will consider the right to a jury trial under the Seventh Amendment. This note will also examine the history and purposes of ERISA. Then, this note will analyze the law before the Adams ruling in light of both Supreme Court and previous Tenth Circuit decisions. Finally, this note will analyze the Adams court's reasoning and the fallacies therein, predict the implications of the decision on other ERISA claims, and suggest a better result.

II. Seventh Amendment

The Seventh Amendment states:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right to a jury trial 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 the common law.⁴

As a result of the "[i]n suits at common law"⁵ language, courts have determined a plaintiff's entitlement to a jury trial based upon whether the claim presented was

1. 149 F.3d 1156 (10th Cir. 1998).
2. In this case, the employer had two severance packages. The plaintiffs felt that upon their firing they were entitled to the more generous benefits package than they received.
4. U.S. CONST. amend. VII.
5. Id.
legal or equitable in nature at common law.⁶ At common law, legal claims, but not equitable claims, were determined by a jury.⁷

The remedy sought by a plaintiff is an important consideration in determining whether the claim is legal or equitable,⁸ and damages are usually a legal remedy.⁹ However, seeking monetary damages does not guarantee the right to a jury trial.¹⁰ For example, damages are equitable if a court characterizes them as restitutionary.¹¹ To determine if the damages are restitutionary, courts examine whether "they would restore the status quo and return the amounts rightfully belonging to another."¹² Even if a court determines that the remedy sought is restitutionary, and thus equitable in nature, a plaintiff may still be entitled to a jury trial. A claim involving both legal and equitable issues or a claim where equitable issues are "incidental" to a legal claim may entitle a plaintiff to a jury trial.¹³

Consequently, courts examine more than whether a legal court would have heard the claim in 1791.¹⁴ Claims that did not exist in 1791, such as ERISA claims, make a broader analysis necessary. For statutorily created claims, courts still focus on the nature of the remedy sought.¹⁵ Courts consider whether a claim involves "'rights and remedies of the sort traditionally enforced in an action at law' . . . and not whether those rights have been recast in statutory garb."¹⁶ The proper characterization of benefits sought under ERISA has been a great source of debate since the statute's enactment.

III. ERISA

A. History

ERISA was enacted on September 2, 1974.¹⁷ The stated purpose of the Act is to "protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting of

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8. See id. at 565; see also McCabe, supra note 6, at 482.
10. See Borst v. Chevron Corp., 36 F.3d 1308, 1324 (5th Cir. 1994).
12. Id.
financial and other information . . . and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.\textsuperscript{18} Other objectives of ERISA include ensuring that workers are informed about their plan and setting standards for those managing the plan.\textsuperscript{19}

\textbf{B. Coverage of Welfare Plans}

The motivation behind ERISA was a desire to protect workers from "abuse and mismanagement in the private pension system,"\textsuperscript{20} yet the Act grew to have broad consequences outside of protecting employees.\textsuperscript{21} In addition to retirement income, ERISA governs another area of employee benefits — the statute covers pension plans plus other benefits, including disability and accident benefits.\textsuperscript{22} The Act covers two types of employee benefit plans: welfare plans and pension plans. ERISA defines a "welfare plan" as "a wide variety of benefit programs ranging from medical and hospital care to accident, death, disability, and unemployment benefits."\textsuperscript{23}

\textbf{C. Enforcement of Rights Under ERISA}

Prior to ERISA's enactment, employees had little redress if an employer failed to provide promised benefits. Employees had difficulty coming up with the money to battle a wealthy employer and had trouble getting into court.\textsuperscript{24} As a result, employees had difficulty enforcing employee benefit plans.\textsuperscript{25}

An employee benefit reform bill was not proposed until 1967.\textsuperscript{26} The result was ERISA. Although ERISA is detailed, the statute leaves several questions unanswered, including whether ERISA allows plaintiffs a jury trial.\textsuperscript{27} Because the statute does not specifically address the right to a jury trial, scholars have debated whether the right is implicit in the statute.\textsuperscript{28}

\begin{itemize}
  \item 18. 29 U.S.C. § 1001(2)(b) (1994) (ERISA § 2(b)).
  \item 20. \textit{Id.} at 1.
  \item 21. \textit{See} New York Law Journal, Living with ERISA 3 (1977) ("ERISA started out as a piece of social labor protective legislation, with concepts akin to the minimum wage law to OSHA, but then spilled over to have consequences in the tax area.") [hereinafter Living with ERISA].
  \item 22. \textit{See} Goor, \textit{supra} note 3, at 95.
  \item 23. Coleman, \textit{supra} note 19, at 5.
  \item 24. \textit{See} Living with ERISA, \textit{supra} note 21, at 49.
  \item 25. \textit{See id.}
  \item 26. \textit{See} Coleman, \textit{supra} note 19, at 3.
  \item 28. \textit{See, e.g.,} Clemow & Lattan, \textit{supra} note 6, at 759.
\end{itemize
1. The Statute and the Right to a Jury Trial

ERISA provides a means to enforce rights created under the statute. Under the statute, both participants and beneficiaries have the right to sue. A participant can bring an action "to recover benefits due to him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." Because ERISA does not specify whether a plaintiff suing under the statute is entitled to a jury trial, courts and scholars have used different analyses to determine whether the right to a jury trial exists.

2. Basis for Analyzing the Right to a Jury Trial Under ERISA

Parties contending that plaintiffs have a right to a jury under ERISA have tended to focus on plaintiffs' rights prior to ERISA's enactment. Before the Act, an employee's suit to reverse a denial of benefits fell under contract law; and some courts have been persuaded by the analogy to contract law to allow a jury trial. Consequently, courts will examine whether the plaintiffs are seeking the types of damages recoverable under common law breach of contract claims.

In determining the existence of a right to a jury trial, courts are often bound by another principle of ERISA cases: courts examine ERISA in light of its relationship to trust law. Courts using this analysis usually decide against jury trials, as trust claims have always been equitable. However, not all critics agree that trust law is an appropriate analog for ERISA claims. Congress has recognized that trust law may be inadequate to deal with some ERISA claims. However, the statute expressly states that certain provisions of the statute codify trust law principles as applied to fiduciaries.

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30. See id.
31. Id.
33. See Bersi, supra note 6, at 438 (stating that courts granting the right to a jury trial rely on the analogy to contract law); George L. Flint, Jr., ERISA: Jury Trial Mandated for Benefit Claims Action, 25 Loy. L.A. L. Rev. 361, 376-77 (1992) (noting the effect of the contract analogy on the right to a jury trial); McCabe, supra note 6, at 487 (asserting that courts focusing on the contractual nature of ERISA claims take "the analysis a step further").
35. See Firestone, 498 U.S. at 115.
36. See Bersi, supra note 6, at 445 (listing the relationship to trust law as one reason why courts deny the right to a jury trial); McCabe, supra note 6, at 485 (discussing the trust law characterization for ERISA claims); Flint, supra note 33, at 376-77 (analyzing the importance of the "interpretational approach" on the right to a jury trial under ERISA).
37. See Geer, supra note 5, at 96.
38. See id.
39. See id.
IV. Law Prior to Adams

The analysis of plaintiffs' rights to jury trials under ERISA has been clouded by several United States Supreme Court decisions, none of which directly address the issue. The Supreme Court has addressed issues related to an ERISA plaintiff's right to a jury trial in the following three cases: Firestone Tire & Rubber Co. v. Bruch; Ingersoll-Rand Co. v. McClendon; and Mertens v. Hewitt Associates.

A. Firestone

In Firestone, the Firestone Company sold its Plastics Division to Occidental Petroleum Company. The company's employees in that division were rehired by Occidental; however, some of the employees sought severance benefits claiming that the sale and subsequent rehiring constituted a reduction in force. The plan administrator determined that the employees were not entitled to severance benefits. Several of the employees also requested plan information under ERISA's disclosure requirements. The plan administrator refused to comply, maintaining that the employees were no longer "participants" of the plan. The employees sued Firestone for severance benefits under ERISA section 502(a)(1)(B) and for damages for failure to comply with the information request under ERISA sections 502(a)(1)(A) and (c)(1)(B).

The United States Supreme Court held that the appropriate standard of review for the denial of benefits is a de novo standard rather than an arbitrary and capricious standard. The Court reasoned that ERISA claims are analogous to trust law claims, and under trust law, trustee decisions are examined under the "arbitrary and capricious" standard only if the trustee has discretion under the plan. As a result, the Court held that de novo review for denial of benefits is proper unless the trustee was expressly acting with discretion.

As to the jury trial issue, the Court stated in dicta that it was unlikely that Congress intended for employees to have less protection under the Act than under pre-ERISA law. The Supreme Court reasoned that this result would conflict

40. See Clemow & Lattan, supra note 6, at 758.
41. These cases are frequently discussed by both courts and writers. See Clemow & Lattan, supra note 6, at 763-70 (discussing the Ingersoll (referred to by the authors as McClendon) decision in light of the Mertens decision); McCabe, supra note 6, at 500-03 (analyzing the Firestone decision as it relates to the standard of review for benefit denials); Nancy L. Pirkey, The Availability of Jury Trials in ERISA Section 510 Actions: Expanding the Scope of the Seventh Amendment, 27 VAL. U. L. REV. 139, 153-56 (weighing the effect of Ingersoll and Firestone on ERISA Section 510 claims).
45. See Firestone, 489 U.S. at 115.
46. See id.
47. Id. at 112.
48. See id. at 115; see also McCabe, supra note 6, at 496-97.
49. See Firestone, 489 U.S. at 102 ('Adopting Firestone's interpretation [favoring the arbitrary and
with "ERISA's stated purpose of promot[ing] the interest of employees and their beneficiaries."\textsuperscript{50} The Court also stated that "[g]iven this language and history, we have held that courts are to develop a federal common law of rights and obligations under ERISA regulated plans."\textsuperscript{51}

Relying on the Firestone decision, courts began to speculate that ERISA guaranteed the right to a jury trial in some cases. One court stated, "recent decisions of the Supreme Court indicate that there may be a right, at least where the underlying cause of action is a legal one."\textsuperscript{52} At least one author interpreted the dicta to mean the Court agreed that ERISA claims were analogous to contract law;\textsuperscript{53} however, this result seems unlikely, given that the claim was decided on trust law principles concerning the standard of review for a trustee's decisions. While the dicta in Firestone favors the contract law analogy for ERISA claims, the holding of the case strongly draws on the trust law analogy. As a result, one commentator recognized the "inherent difficulty in determining which principles should apply to ERISA."\textsuperscript{54}

B. Ingersoll

In Ingersoll, an employee sued his former employer under state law for wrongful discharge. The Supreme Court held that the claim was preempted by ERISA.\textsuperscript{55} While the Court's holding did not impact the right to a jury trial under ERISA, a statement made in dicta set off a debate similar to that caused by Firestone. The Court stated that "there is no basis in [ERISA] section 502(a)'s language for limiting ERISA actions to only those which seek 'pension benefits'. It is clear that the relief requested here [money damages] is well within the power of the federal courts to provide."\textsuperscript{56}

Courts and commentators have interpreted this language in various ways and its meaning has been widely debated.\textsuperscript{57} Commentators have suggested that the language was simply an overly expansive explanation of the wide variety of ERISA remedies available, as opposed to a creation of new remedies.\textsuperscript{58} However, some courts determined that ERISA allowed damages traditionally legal in nature, in the form of extracontractual damages, and thus plaintiffs were

capricious standard of review] would afford employees and their beneficiaries less protection than they received under pre-ERISA cases . . . a result that Congress could not have intended in light of ERISA's stated purpose of 'promot[ing] the interests of employees and their beneficiaries.'\textsuperscript{4}).

50. \textit{Id.} at 113.
51. \textit{Id.} at 110.
52. Steeples v. Time Ins. Co., 139 F.R.D. 688, 691 (N.D. Okla. 1991). \textit{But see} Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1160 (10th Cir. 1998) (maintaining that Firestone had no bearing on whether an ERISA benefit claim was legal or equitable).
54. \textit{Geer, supra} note 3, at 96-97.
57. \textit{Ingersoll}, 498 U.S. at 145.
58. \textit{See} Clemow & Lattan, \textit{supra} note 6, at 767-69; Pirkey, \textit{supra} note 41, at 761.
59. \textit{See} Clemow & Lattan, \textit{supra} note 6, at 764-65.
entitled to a jury. However, other courts were not convinced. One court reasoned that the Supreme Court could not have intended to imply the right to a jury trial in dicta.

C. Mertens

In Mertens, a group of former employees sued their pension plan's actuary for allegedly inaccurate actuarial assumptions. The plaintiffs contended that the actuary's inaction led to plan losses. The plaintiffs sought money damages, and the Supreme Court characterized the money damages sought as legal. The Court stated, "Although they often dance around the word, what petitioners in fact seek is nothing other than compensatory damages — monetary relief for all the losses their plan sustained as a result of the alleged breach of fiduciary duties. Money damages are, of course, the classic form of legal relief." However, the Court went on to state that equitable courts had always possessed the right to provide some legal relief.

As in Ingersoll, the Mertens Court's dicta increased the debate over the Supreme Court's view on the right to a jury trial under ERISA. After the Supreme Court's decision in Mertens, most courts no longer saw Ingersoll and Firestone as a signal of the Court's approval of the right to a jury trial.

None of these three Supreme Court decisions directly addressed the right to a jury trial under ERISA. However, the Supreme Court's language in each case served to fuel debate over the right to a jury trial under ERISA. As a result, the Supreme Court's position on whether ERISA allows jury trial is very unclear. At least one commentator has noted that it is "foolhardy" to predict how the Supreme Court will vote based upon similar precedent when the issue has not been identical. The Tenth Circuit is also convinced that the Supreme Court's silence is meaningful.

62. See id. at 8 (citing other courts' reliance on the Ingersoll dicta and holding that no right to a jury trial existed).
64. Id.
65. See id. at 256 ("It is true that, at common law, the courts of equity had exclusive jurisdiction over virtually all actions by beneficiaries for breach of trust . . . It is also true that money damages were available in those courts against the trustee . . . At common law, however, there were many situations — not limited to those involving enforcement of a trust — in which an equity court could 'establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority.").
68. See 9th Circuit Decides That § 510 Claims Do Not Require a Jury Trial, supra note 66, at *12.
69. See Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1160 (10th Cir. 1998).
D. The Tenth Circuit

Although the Tenth Circuit did not address the issue prior to Adams, several cases correctly hypothesized what the court's decision would be in the event it did confront the issue. For example, in Pegg v. General Motors Corp., the district court concluded that the Tenth Circuit likely would find that plaintiffs have no right to a jury trial under ERISA. The district court, in making this conclusion, relied on the Tenth Circuit's statement that "[w]e do note, however, that at least two circuits have held that ERISA does not grant litigants a right to a trial by jury." Another court made the same prediction after Ingersoll.

E. District Court Decisions from the Tenth Circuit

Prior to Adams, Oklahoma had precedent allowing a jury trial under ERISA. In Steeples v. Time Insurance Co., the United States District Court for the Northern District of Oklahoma held that an ERISA plaintiff who sought medical benefits was entitled to a jury trial. The court reasoned that the case was analogous to a breach of contract claim and therefore, the court concluded that a jury trial was necessary. Adams, however, effectively overruled Steeples.

Other district courts within the Tenth Circuit denied the right to a jury trial under ERISA. In Pegg, the plaintiff sued for backpay and benefits under a retirement plan. The Pegg court reasoned that the plaintiff was seeking participation in a plan and the benefits accompanying participation. As a result, the court concluded that the claim was equitable. Consequently, an ERISA plaintiff's right to a jury trial in the Tenth Circuit depended on the district.

V. Adams v. Cyprus Amax Minerals Co.

A. The Facts

The plaintiffs in Adams were thirty-nine employees of Amax's Research and Development Center in Golden, Colorado, a subsidiary of Amax, Inc. Amax merged with Cyprus Minerals Company, and as a result of the merger, the plaintiffs' positions were terminated.

Amax, Inc. had a corporate separation policy for corporate employees and the terminated employees sought to receive severance benefits under this plan. Although the plaintiffs received some severance benefits, these benefits were less

71. See id. at 285.
75. See id. at 694.
76. See id. at 693-94.
78. See id. at 287.
79. See id.
than they would have received under the corporate employee plan (the Corporate Plan). Because the employees would receive more under the Corporate Plan, this plan was the Enhanced Severance Plan. Under the Corporate Plan, employees were entitled to enhanced severance benefits in the event of a firing; the benefits were available even if a change in company control led to the firing. The Corporate Plan, however, provided that it covered only "corporate employees," defined as "personnel of the Company at the Company's corporate headquarters other than Corporate Officers." Accordingly, the terminated employees contended that they worked at "corporate headquarters" and therefore were corporate employees entitled to the Corporate Plan's benefits.

The terminated employees sued Cyprus Amax and Helen M. Feeney, the administrator of the Plan. They sought recovery of benefits, damages for breach of fiduciary duty, and monetary recovery. Additionally, the plaintiffs sought to recover civil penalties from Feeney pursuant to ERISA sections 502(a)(1)(A) and 502(c). This claim was based on Feeney's failure to respond to a letter from the Human Resources Manager for Amax Research and Development, Inc., the subsidiary employing the plaintiffs.80

Additionally, the plaintiffs demanded a jury trial. The defendants denied that the plaintiffs were entitled to the enhanced severance package.81 According to the defendants, the plaintiffs had no Seventh Amendment right to a jury trial because the claim was equitable. The plaintiffs withdrew their jury demand for the claims against Feeney.82 The claim against her as plan administrator was specifically left to the "court's discretion" under ERISA section 502(c).83 However, the plaintiffs contended that they still were entitled to a jury trial on the other claims.84 According to the plaintiffs, these claims were analogous to breach of contract claims.85 Based on prior case law, if a court accepted the analogy to breach of contract claims, the plaintiffs would be entitled to a jury trial.86

B. Procedural History

Initially, the district court refused to grant summary judgment for Feeney. Cyprus Amax filed a motion to strike the plaintiffs' demand for jury trial on the remaining claims; however, the district court held that the plaintiffs were entitled to a jury trial.87 According to the district court, Firestone signaled Supreme Court approval of the right to a jury trial under ERISA and that courts should maintain pre-ERISA rights under the Act.88

81. See Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1158 (10th Cir. 1998).
82. See id.
83. Id.
84. See id.
85. See id.
88. See id. at 1473 ("The clear message conveyed in Firestone was that the Supreme Court sees
The district court adopted a two-part test to determine whether the plaintiffs were entitled to a jury trial — a test endorsed by the Supreme Court in Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry.99 Although the test was used prior to Terry, the Adams district court specifically relied on the Terry language.90 The first step of Terry requires examining the nature of the issues involved to see if the issue would have been a legal or equitable claim in the eighteenth century.91 The second step requires courts to determine whether the nature of the remedy sought is legal or equitable.92 The second step carries greater weight than the first.93

For the first branch of the Terry test, the district court characterized the claim as similar to a breach of contract claim, reasoning that the issue was the plaintiffs' eligibility under a specific plan.94 To determine eligibility, a court would have to examine the parties' intentions and previous application of the Plan.95

For the second branch of the Terry test, the district court determined that the benefits sought were "fairly certain of ascertainment."96 The district court concluded that the primary relief sought was money damages.97 The court further determined that the relief was not restitutionary or incidental to injunctive relief.98 Accordingly, the court concluded that the plaintiffs were entitled to a jury trial on their first five claims.99 In response, the defendants filed an interlocutory appeal.100

C. The Adams Court Decision

The Tenth Circuit reviewed the district court's decision de novo.101 The court rejected the analogy to a breach of contract claim, finding, contrary to the district court, the plaintiffs' claims more analogous to a trust claim.102 As such, the court concluded that under the first step of Terry the claim was equitable in nature.103 This analysis was used even for the claim relating to money damages.104 Accor-

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ERISA as maintaining the protection formerly afforded plan participants and beneficiaries, rather than their existing rights.

98. See Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1159 (10th Cir. 1998).
99. See Terry, 494 U.S. at 565.
100. See id.
101. Id. at 1477.
102. See id.
103. See id.
104. See id.
105. See id. at 1153.
106. See id. at 1161.
According to the court, the threshold issue was the plaintiffs' eligibility under the plan, leading the court to determine that the claim was equitable.

For the second branch of Terry, the Tenth Circuit noted the "restitutionary" and "incidental to injunctive relief" exceptions to the rule that money damages are legal in nature. According to the court, the focus was not on the ultimate remedy sought by the plaintiffs, but instead, the focus should be on the eligibility determination. The court reasoned that unless the plaintiffs were eligible under the plan, the remedy they sought was unavailable. This reasoning led the court to conclude that the plaintiffs' suit for money damages was "inextricably intertwined with equitable relief."

The Tenth Court also considered the damages sought as restitutionary in nature. The court reasoned that the damages would be "taking from the defendant and restoring to the plaintiff something to which the plaintiff is entitled." Based upon these two conclusions, the court found that the plaintiffs were not entitled to a jury trial.

VI. Analysis of the Adams Decision

According to the Tenth Circuit's analysis, the issue was eligibility for benefits. Similar reasoning had been used by other courts and criticized as ignoring the remedy sought and the relationship of benefit claims to breach of contract.

Additionally, every ERISA case concerns whether a plaintiff is covered under an ERISA plan. Thus, according to the Tenth Circuit's reasoning, no ERISA plaintiffs are entitled to a jury trial. This overly broad analysis clashes with the analysis the Supreme Court outlined in Terry. The Adams reasoning also is contrary to holdings of several courts, particularly courts reasoning that suits to enforce ERISA plans are contractual in nature — decisions which entitle plaintiffs to a jury trial.

The Adams court's reasoning is also contrary to that used by the district court. According to the district court, although the overall claim is equitable, the right to money damages was legal. This approach seems more reasoned in light of
the Supreme Court’s views expressed in Terry. Terry directed courts to look at
the specific claims involved.119

The Tenth Circuit’s reasoning that eligibility was the crux of the case was
unusual in that most courts denying the right to a jury trial have viewed ERISA
damages as restitutory in nature120 or have focused on what the plaintiffs
ultimately hope to recover.121 The Tenth Circuit felt the primary focus was
whether the plaintiffs had a right to recover.122 This approach does not conform
to the Supreme Court’s analysis outlined in Terry; however, the approach is
similar to that used by the court in Pegg.123

Under the Tenth Circuit's reasoning, every ERISA claim is equitable. A party
has standing to sue under ERISA only if he is a participant or beneficiary.124
Thus, whether a party is a participant in the plan sought to be enforced is a
threshold issue in every case. An analogous claim could be made that the claims
are legal. Under breach of contract claims, privity to a contract is a threshold
issue. ERISA eligibility issues are more comparable to breach of contract claims
than to trust claims because both ERISA and contract claims depend upon a
determination of whether a plaintiff is a party either to the pension plan or
contract. Additionally, the eligibility issue depends on interpretation of the Plan's
terms and therefore, is similar to a breach of contract claim.

The Supreme Court provided some guidance on the eligibility issue in
Firestone. Under ERISA, participants and beneficiaries are two of the parties with
the power to bring enforcement actions.125 The Court defined participants as
"employees in, or reasonably expected to be in, currently covered employment .
. . or former employees who 'have . . . a reasonable expectation of returning to
covered employment' or who have 'a colorable claim' to vested benefits."126

According to the Firestone court, plaintiffs are eligible for benefits if they have
either a colorable claim that they will prevail or if they will meet the eligibility
requirements in the future.127 In the Adams case, the plaintiffs had a credible
claim to benefits; they met one of the requirements to receiving a severance
package — they were fired. The main issue in the case was the interpretation of
"corporate headquarters employees." If the employees were determined to be
corporate employees, they were entitled to benefits under the Enhanced Severance
Package. If not, the employees already had received the proper amount of

121. See id.; see also Borst v. Chevron Corp., 36 F.3d 1308, 1324 (5th Cir. 1994).
122. See Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1161-62 (10th Cir. 1998).
125. See id.
127. See id.
The plaintiffs had a credible argument that a court could find in their favor: they could have argued that the human resources manager felt that they were entitled to the plan. Presumably, she was in a position to know about Amax's employee benefits programs and if she thought the employees were corporate headquarter employees, a court could have determined that the employees should prevail in a suit. Consequently, the Court's reliance on the eligibility issue is strained. A more reasoned approach would have involved a detailed application of the Terry test and consideration of whether the remedy sought fit into one of the two exceptions.

VII. Proposed Analysis

No matter how great the debate on whether ERISA allows jury trials, there is one matter upon which most courts and scholars agree: the appropriate test for the right to a jury trial is the one used in Terry.128 Almost all cases examining this issue after Terry have used the following test: first, is the claim legal or equitable,129 and second, what remedy are the plaintiffs seeking?130 The problem is that the application of the Terry test does not guarantee the same result in every case.

The result under the Terry test depends on how broadly or narrowly the issue is phrased. A court may characterize the issue as whether plaintiffs who sue for relief under ERISA section 502(a)(1)(B)131 are entitled to a jury trial. This broad characterization leads courts to examine all ERISA decisions on the right to a jury trial, and the overwhelming majority of cases hold that the right to a jury trial does not exist.132 A large number of cases deal with damages for breach of fiduciary relationship claims, and a jury trial is rarely granted in these cases.133 Looking at all ERISA cases together, it would be hard to justify a decision that plaintiffs are entitled to a jury trial.

Conversely, if a court defines the issue more narrowly, it is more likely to find that the right to a jury trial exists. For example, a court could define the issue as whether plaintiffs seeking benefits in the form of money damages are entitled to a jury trial. This characterization is more likely to lead to comparison with

128. See Pegg v. General Motors Corp., 793 F. Supp. 284, 286-87 (D. Kan. 1992) (finding that a plaintiff in a suit to recover retirement benefits had no right to a jury trial); Weber v. Jacobs Mfg., 751 F. Supp. 21, 25-26 (D. Conn. 1990) (relying on Terry to hold that plaintiffs were entitled to a jury trial on legal claims); see also Clemow & Lattan, supra note 6, at 771-72 (applying the test to ERISA Section 510 claims and concluding that plaintiffs suing for interference with ERISA rights were not entitled to a jury trial); Flint, supra note 33, at 410-17 (analogizing ERISA benefit claims to insurance law); Pirkey, supra note 41, at 163-76 (using the same test for the same type of claim as Clemow and Lattan but arguing that the right to a jury trial exists); Note, supra note 14, at 748-56 (applying the test before the Supreme Court used it in Terry).
130. See id.
132. See Geer, supra note 3, at 95-96.
133. See 9th Circuit Decides That § 510 Claims do not Require a Jury Trial, supra note 66, at 12.
contract law. There is precedent on similar claims allowing the right to a jury trial.\textsuperscript{134} This analysis appears similar to that used by the district court in rendering the decision in \textit{Adams}.

The Tenth Circuit adopted a broad test for the claim. The court considered the issue to be whether "the Seventh Amendment of the United States Constitution entitle[s] Plaintiffs to a jury trial on claims to recover enhanced severance plan benefits under 29 U.S.C. § 1132(a)(1)(B) . . . ?"\textsuperscript{135} The court did consider the claims separately in a cursory fashion. The court found that all of the claims related to determining whether the plaintiffs were beneficiaries of the plan.\textsuperscript{136} Based on this finding, the court determined that all of the plaintiffs' claims were equitable in nature.

However, the fact that one of the claims presented is almost uniformly considered equitable does not mean that all of the claims are equitable.\textsuperscript{137} "The right to a jury trial is not lost where legal and equitable issues are presented in a single case or where legal issues are 'incidental' to equitable issues."\textsuperscript{138} Legal claims do not become equitable because they are brought in a traditionally equitable court.\textsuperscript{139}

The \textit{Terry} test focuses on the issues independently, not on the overall nature of the suit.\textsuperscript{140} If the Tenth Circuit had concluded that some of the claims were equitable and some were legal, the court should have bifurcated the trial or tried the cases jointly. The joint trial can be done with the jury hearing all claims and issuing a final verdict on the legal issues and an advisory verdict on the equitable issues.\textsuperscript{141} Consequently, the Tenth Circuit had a means to enforce a split ruling on the right to a jury trial. This approach would have been consistent with the broad scope of the Seventh Amendment.

However, the Tenth Circuit seemed to decide that one claim was equitable and therefore, all the claims were equitable. A more comprehensive approach and analysis is appropriate in light of \textit{Terry}'s focus on individual claims.\textsuperscript{142} As a result, this note will analyze the breach of fiduciary relationship claim and the claim for benefits under the Enhanced Plan individually under \textit{Terry} to determine whether the right to a jury trial should exist for each.

\textsuperscript{134} See Steeples v. Times Ins. Co., 139 F.R.D. 688, 694 (N.D. Okla. 1991) (affirming causes of action for payment of medical insurance benefits under ERISA are legal, and therefore, plaintiffs have a constitutional right to a jury trial); Vicinanzo v. Brunschwig & Fils, 739 F. Supp. 882, 885 (S.D.N.Y. 1990) (reasoning that the right to a jury trial was obvious); Stamps v. Michigan Teamsters Joint Council, 431 F. Supp. 745, 747 (E.D. Mich. 1977) (holding that the plaintiff was entitled to a jury trial on a claim for money damages).

\textsuperscript{135} Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1158 (10th Cir. 1998).

\textsuperscript{136} See id. at 1162.

\textsuperscript{137} See Vicinanzo, 739 F. Supp. at 887; see also Pirkey, supra note 41, at 175.

\textsuperscript{138} Id. (quoting Dairy Queen, Inc. v. Wood, 369 U.S. 469, 473 (1962)).

\textsuperscript{139} See id. (discussing Ross v. Bernhard, 396 U.S. 531, 538 (1970)).


\textsuperscript{142} See Pirkey, supra note 41, at 166 (suggesting that in a suit with more than one claim, the claims must be considered individually under \textit{Terry}).
A. The Breach of Fiduciary Relationship Claim

ERISA section 404 requires the duties of fiduciary, and section 406 prohibits fiduciaries from participating in certain transactions. In Adams, the plaintiffs maintained that the defendants breached these statutory duties. Congress provided a civil enforcement provision for these statutes in ERISA section 502(a)(1).

Applying the Terry test to the plaintiffs' claims, the first issue is whether the claim would have been heard by a legal or equitable court in the 1800s. Like the claim in Terry, ERISA claims did not exist in the eighteenth century. However, a plaintiff still may be entitled to a jury trial under Terry. The Supreme Court has actively preserved the right to a jury trial for legal issues. The Supreme Court rationalizes its vigilance by stating that "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.

This careful scrutiny requires looking for an analogous action from the eighteenth century. Most courts which have examined this issue for breach of fiduciary relationship claims have found a trust action to be analogous to ERISA claims. As trust claims were equitable at common law, an ERISA plaintiff would not have the right to a jury trial under the first branch of the Terry test.  The second branch, however, is of greater importance.

Under the second branch of the Terry test, a court examines the nature of the remedy sought. In Adams, the plaintiffs sought the same damages for all five of their claims against Amex. These damages included benefits due under the severance plan, prejudgement interest, attorneys' fees, costs, and other equitable relief. Given the plaintiffs' desires for a jury trial, the request for equitable relief seems ill-conceived. However, whether the other benefits sought are legal or equitable is at least debatable.

Other cases examining breach of fiduciary relationship claims have denied the right to a jury trial. One court reasoned that the claim must be examined

144. Id. § 1106.
145. Id. § 1132.
146. The claim was for a union's alleged breach of duty of fair representation. See Terry, 494 U.S. at 561.
147. See id. at 565.
148. Id. (quoting Dimick v. Scheidt, 293 U.S. 474, 486 (1935)).
149. See id.
150. See Pirkey, supra note 41, at 166.
151. See id.
152. See id.
153. See Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1161 (10th Cir. 1998).
154. See 9th Circuit Decides That Section 510 Claims Do Not Require a Jury Trial, supra note 66, at 12.
under trust law, and consequently, a jury trial was inappropriate.\textsuperscript{155} However, other courts have compared breach of fiduciary relationship claims to traditionally equitable retaliatory discharge claims.\textsuperscript{156} This analogy weighs towards granting jury trials. However, courts have held that the second branch of the Terry test weighs strongly against granting jury trials for breach of fiduciary relationship claims.\textsuperscript{157}

In light of Terry, the Tenth Circuit still could have found that the plaintiffs were entitled to a jury trial. The court should have reasoned the plaintiffs primarily were seeking their benefits under the enhanced severance package and money damages for the alleged breach. This analysis could be enough to show that the remedies sought are equitable; however, this result seems unlikely given the number of jurisdictions reaching a contrary holding.

The weight of precedent from other circuits may justify the Adams court's refusal to grant a jury trial on the breach of fiduciary relationship claim. Nonetheless, the analysis is not as clear cut for the other claims presented.

B. Recovery of Plan Benefits and Money Damages

The plaintiffs in Adams sought recovery of benefits under ERISA section 502(a)(1)(B). This provision provides that "[a] civil action may be brought — by a participant or beneficiary — . . . to recover benefits due to him under the terms of his plan, to enforce his rights under terms of the plan, or to clarify his rights to future benefit under the terms of the plan."\textsuperscript{158} The plaintiffs in Adams maintained that because they were seeking money damages, they were entitled to a jury trial. The Tenth Circuit disagreed.

Under the first step of Terry, the initial question concerns the nature of the issues involved. In Adams, the question was whether recovery of benefits is a legal or equitable issue. There is no definite answer to this question; however, several cases have held that plaintiffs suing for recovery of benefits are entitled to a jury trial.\textsuperscript{159}

Some courts' decisions provide a well-reasoned basis for the position that recovery of benefits is legal relief. In the Adams case, the plaintiffs contended that they were entitled to the enhanced severance package and the company failed to provide the benefits. This claim is factually similar to cases in which employees have sued to regain medical benefits under employer-provided


\textsuperscript{156} See 9th Circuit Decides that Section 510 Claims Do Not Require a Jury Trial, supra note 66, at 11.

\textsuperscript{157} See id. at 12.


\textsuperscript{159} See Steeple v. Time Ins. Co., 139 F.R.D. 688, 694 (N.D. Okla. 1991) (affirming causes of action for payment of medical insurance benefits under ERISA are legal and therefore, plaintiffs have a constitutional right to a jury trial); Vicinanzo v. Brunschwig & Fils, Inc., 739 F. Supp. 882, 885 (S.D.N.Y. 1990) (reasoning that right to a jury trial was obvious); Stamps v. Michigan Teamsters Joint Council, 431 F. Supp. 745, 747 (E.D. Mich. 1977) (holding that the plaintiffs were entitled to a jury trial on a claim for money damages).
insurance. Courts have characterized these cases as similar to breach of contract claims. The district court in Adams followed this reasoning finding that the issue was legal and comparable to a breach of contract claim.

Moreover, this approach conforms with the Supreme Court's dicta in Firestone which suggested that ERISA never was intended to reduce employees' rights. Because of ERISA's stated purpose of protecting employee rights, this approach is credible. It seems unfair that a statute designed to benefit employees would provide them with less protection than they had prior to ERISA. Before the statute was enacted, claims for failure to provide promised benefits fell under breach of contract and were heard by a jury.

The plaintiffs' claim in Adams is analogous to a breach of contract case. The plaintiffs maintained that they were eligible for the benefits provided to "corporate headquarters employees." As a result, the case revolves around the determination of whether the plaintiffs were party to the Corporate Plan. This analysis is the functional equivalent of determining whether a party is privy to a contract. Under common law, this would have been a legal issue. As one author noted, there is a close tie between ERISA "benefits due" claims and contract law. Commentators have compared lawsuits where the plaintiffs seek funded benefits to lawsuits concerning insurance contracts. The Supreme Court's holding in Firestone could be seen as an endorsement of this tie. Consequently, the first branch of the Terry test favors the right to a jury trial on the claims for benefits and money damages.

Looking at the second part of the Terry test, the case for a jury trial becomes even stronger. For this claim, the plaintiffs sought the benefits they would have received under the enhanced severance package. This translates into more money and more health benefits. The Vicinanzo v. Brunschwig & Fils and Steeples decisions involved actions to recover the medical benefits that employees alleged their employers failed to provide as promised. The decisions are factually similar to Adams, and in both, the courts determined that the plaintiffs were entitled to jury trials.

Certainly, the right to a jury trial is not automatic just because a plaintiff seeks money damages. However, money damages are usually a legal remedy unless they fit in one of the two Terry exceptions. The first exception is present where

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160. See also Flint, supra note 33, at 413; supra note 159.
164. Geer, supra note 3, at 96.
165. See Flint, supra note 33, at 410-13.
166. See id.
the money damages are restitutionary in nature.169 The second exception applies when money damages are incidental to injunctive relief.170

In *Adams*, the main remedies sought by the plaintiffs were money damages and greater severance pay. Both types of relief would be considered legal relief unless one of the two exceptions is present. In *Adams*, the plaintiffs did not seek equitable relief such as rescission. Instead, they prayed for money damages and the benefits available under the enhanced severance package. The damages sought clearly were not within the second *Terry* exception. The money and benefits were not incidental to injunctive relief — the plaintiffs only wanted money and benefits. Any injunctive relief would be secondary to that remedy.

The only issue remaining is whether the damages sought were restitutionary. Some courts have held that ERISA damages are restitutionary;171 however, there is a strong argument that under *Terry* the damages sought are legal. The plaintiffs did not seek any type of specific performance nor did they ask the court for continuing coverage or reinstatement of the enhanced severance package. The *Adams* plaintiffs simply sought money damages and severance benefits. These requests are legal in nature.

The damages sought are not restitutionary for several reasons. First, the plaintiffs did not seek damages to restore the status quo. The fiduciaries had not taken participant assets that they would have been required to return. The participants merely argued that they were eligible for more benefits under the enhanced severance package. To determine this, a court would have to interpret the Plan. This interpretation clearly resembles a breach of contract action. Consequently, the damages sought were not restitutionary. Because the money damages do not fit within either of the *Terry* exceptions, they were legal in nature.

**VIII. Conclusion**

The *Adams* plaintiffs sought monetary and health benefits under a severance plan more generous than the one which their employer awarded. When the employees sued to obtain the more generous plan under ERISA, the Tenth Circuit addressed the issue in a case of first impression. According to the Tenth Circuit, the employees were entitled to benefits only if they were participants in the plan. The court characterized the issue as equitable and accordingly, held that the plaintiffs were not entitled to a jury trial.

The Tenth Circuit’s holding followed that of the other circuit courts who have addressed the issue. However, the holding effectively overruled a prior United States District Court case from Oklahoma allowing jury trials under ERISA. The court’s reasoning as to the eligibility issue was unique, even among courts denying the right to a jury trial.

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170. See *Adams v. Cyprus Amax Minerals Co.*, 149 F.3d 1156, 1161 (10th Cir. 1998).
According to the *Terry* test, the plaintiffs should have received a jury trial. Their claim was analogous to a breach of contract claim and the monetary benefits the plaintiffs sought are traditionally restitutionary. The benefits had never been awarded to the plaintiffs and consequently, were not restitutionary. As a result, the plaintiffs fell within the traditional definition of legal damages. Consequently, the plaintiffs should have received a jury trial. This result would comply with the Seventh Amendment and the Supreme Court's view of the importance of the jury.

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