ERISA Benefits Litigation: Who Can Be Sued?

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There has been a surprising lack of consensus by the courts regarding whom a participant should sue under the Employee Retirement Income Security Act of 1974 (ERISA) to recover benefits due under the terms of a plan. The article reviews the courts' varying treatment of the subject and proceeds to look at the structure, words, and history of the statute. The article concludes that an employee benefit plan is the only proper party defendant to an ERISA benefits lawsuit.

A key feature of ERISA is that it grants participants "ready access to the [f]ederal courts"[1] to sue for benefits due under the terms of a plan. This is no accident. At the time, Congress was greatly concerned that employers were not keeping their promises to pay benefits, and employees had no recourse to do anything about it. Congress, therefore, sought "to remove [the] jurisdictional and procedural obstacles [that] . . . have hampered . . . recovery of benefits due to participants."[2]

As part of that effort, ERISA created an express federal remedy to recover on a claim for benefits. This is found under ERISA's civil enforcement section, ERISA Section 502(a)(1)(B). The first clause of that section provides, in relevant part, that "[a] civil action may be brought by a . . . participant or beneficiary . . . to recover benefits due to him under the terms of his plan."[3]

Remarkably, there has been no consensus in the past 30 years on whom the defendants should be on a claim for benefits. By and large, it hasn't mattered because it is generally understood that if a plaintiff wins, the plan pays. Over the years, however, more and more actors have emerged on the scene with varying levels of involvement in the administration of pension, health, and welfare plans. As these third party administrators have become more prevalent, particularly in the health area, it has become less and less clear who is responsible for paying a benefits claim.

The courts, unfortunately, have not been much help. They have come down on all sides of the question. The vacuum created by the

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courts has made the question of whom one sues a product of legal guess work. The prevailing confusion has made the stakes enormous for both sides of a benefits controversy. On the one side, participants must sue wisely lest they pick the wrong party and find that the statute of limitations has run out on their claims. On the other side, an open-ended class of third parties—employers, insurance providers, and others—is at risk of being sued and possibly having to pay judgments based on their involvement, however tenuous, with an ERISA plan.

The authors believe there is a simple, straightforward solution to the problem. It certainly cannot be found, however, in the case law. Rather than simply accepting that statement, this article reviews some of the leading court decisions in this area. The authors have found that the courts have done little to answer the basic question of who is the right party to sue in a benefits lawsuit. This is surprising because the structure, words, and history of ERISA make it clear who should be sued.

JUDICIAL LANDSCAPE

Unfortunately, the courts have not provided a clear and consistent message to litigants as to who is or are the right parties to sue in an ERISA benefits lawsuit. Consequently, when these lawsuits are brought, plaintiffs tend to sue their employee benefit plans and anyone else with a connection to their plans.

Suing the Plan

As noted above, plaintiffs that file ERISA actions to recover benefits often will sue their plans. Some courts have concluded, in turn, that a plan can and should be sued. Courts have not relied on ERISA Section 502(a)(1)(B) to reach this conclusion because that subsection outlines for what reasons a suit can be filed, not who can be sued.[4] Thus, the courts have turned to another ERISA Section 502 for guidance. ERISA Section 502(d)(1) provides, in part, that "[a]n employee benefit plan may sue or be sued under this title as an entity."[5] ERISA Section 502(d)(2) further provides that "[a]ny money judgment under this title against an employee benefit plan shall be enforced only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity."[6]

Citing ERISA Section 502(d)(2), the Seventh Circuit in *Jass v. Prudential Health Care Plan, Inc.* held that "ERISA permits suits to recover benefits only against the [p]lan as an entity . . . ."[7] Following *Jass,* the Seventh Circuit has refused to allow a plaintiff to bring a suit to recover benefits against individual corporate members, rather than the plan. In one case, *Garratt v. Knowles*, the Seventh Circuit admonished the plaintiff in *Garratt* that he could not "escape the rule, clearly articulated in *Jass*, that 'ERISA permits suits to recover benefits only against a [p]lan as an entity.'"[8]

Courts in the Seventh Circuit are not alone in deciding that the plan is the proper defendant to an ERISA Section 502(a)(1)(B) claim. The Ninth Circuit, the first circuit to weigh in on this question, has held in *Gelardi v. Pertec Computer Corp.* that "ERISA permits suits [under ERISA Section 502(a)(1)(B)] to recover benefits only against the [p]lan as an entity."[9] The decision in *Gelardi* has been upheld in subsequent Ninth Circuit cases.[10] The Second and Eighth Circuits have relied on *Gelardi* in concluding that the plan itself is the appropriate defendant to an ERISA Section 502(a)(1)(B) claim.[11]

Suing Anyone With a Connection to the Plan

Increasingly, courts have allowed a plaintiff to maintain a benefits action against his employer, the plan's administrator or *de facto* administrator, and the plan's insurer. For example, in the First, Second, Third, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits, courts have held that a participant can sue the administrator of his plan or his employer if it served as the plan administrator.[12]

It is difficult to understand the basis on which the administrator of a plan can be sued to recover benefits due under the plan. The courts that have reached this conclusion have noted that the plan administrator is the person who administers the plan. In fact, however, a plan "administrator" under ERISA has a technical meaning. ERISA defines the term "administrator" as "the person specifically so designated by the terms of the instrument under which the plan is operated."[13] If the plan document does not designate a person as the administrator, then the "plan sponsor" (defined as the employer who established the plan) is deemed to be the administrator.[14] ERISA imposes reporting and disclosure requirements on plan administrators, including a requirement that the administrator files the plan's annual report with the Department of Labor (DOL),[15] supplies various documents to participants and beneficiaries upon written request,[16] and informs qualified beneficiaries of their rights under the Consolidated Omnibus Budget Reconciliation Act (COBRA).[17] ERISA holds the plan administrator accountable for failing to fulfill these duties. An administrator can be fined up to $110 a day for failing to provide required information to participants and beneficiaries or the DOL.[18] An administrator also can be fined up to $1,100 a day for failing to comply with its obligations to file annual reports.[19] These reporting, disclosure, and general information duties have only a tangential relationship with a plan's central administrative function of determining eligibility for and paying benefits to plan participants.

Thus, the term "plan administrator" is misleading. An administrator under ERISA need not be responsible for any of the functions that might commonly be understood as "plan administration." Nothing in ERISA requires the statutory "administrator" to receive, consider, or decide claims for benefits, to see to it that benefits are actually paid, or to oversee the collection or investment of plan assets. Of course, it is frequently the case that the same person or entity that is the statutory administrator is also the person responsible for deciding and paying benefit claims. This common situation contributes to the general lack of understanding about the statutorily defined responsibilities of ERISA plan administrators and fuels uncertainty over who can be sued and for what reason.

For some courts, however, this is the decisive factor in determining if a party is a proper defendant. For instance, the Sixth Circuit held in *Daniel v. Eaton Corp.* that the party who "control[s] administration of the plan" can be sued.[20] Based on this reasoning, the *Daniel* court found that a pension committee "responsible for administering and interpreting the plan and [who] was solely responsible for a denial of benefits" was "the only proper defendant against whom relief could be granted."[21] Similarly, in *Layes v. Mead Corp.*, the Eighth Circuit has held that the proper party defendant "is the party that controls administration of the plan."[22] On that basis, the *Layes* court decided that the plan's insurer, who was named as a defendant, "was at all relevant times the sole administrator of the . . . plan offered by [the employer]."[23]

Some courts have even assigned a name—*de facto* administrator—to signify the kind of actor who can be sued based on its involvement in the administration of the plan. In *Law v. Ernst & Young,* for example, the First Circuit recognized that ERISA specifies that the administrator is the person designated in the plan documents. Yet the court reasoned that when an employer holds itself out as an administrator of the plan, it should be accountable "should it fail to discharge that role in a proper way."[24] The Eleventh Circuit in *Rosen v. TRW, Inc.* similarly held that an employer administering a plan can be sued since it was acting as a *de facto* administrator.[25]

Even where courts have determined that the plan should be sued, they have permitted the participant to sue someone else—particularly the plan's insurance carrier—if he or she cannot identify a plan to sue. Thus, in one case, a district judge held that the plan's long-term disability insurer was a proper defendant in the absence of any evidence identifying a plan to sue. The court justified its decision on the grounds that the insurer both funded the plan and had final authority over the payment of claims.[26] Likewise, in another matter, a district judge held that a plan's health insurer was a proper defendant since the plaintiff had not been able to identify the plan in effect at the time her claim arose. The court in that case also relied on the fact that the health insurer had sole authority over paying out claims.[27]

Assuming a plan can be identified to be sued, the courts disagree on whether, under those circumstances, you can also sue the plan's insurer. The Ninth Circuit addressed this question in *Everhart v. Allmerica Fin. Life Ins. Co.*, and it held that a beneficiary could not sue the plan's insurer because the only proper defendant to an ERISA Section 502(a)(1)(B) action is the plan or the plan "administrator" as defined under ERISA.[28] The dissent in *Everhart* disagreed and argued that it is proper to sue the claims administrator who has discretionary authority to determine whether participants are owed benefits. On that basis, the dissent believed that, like the named defendant, plan insurers are proper defendants. The dissent also asserted that the majority's holding ignored the reasoning behind the Supreme Court's decision in *Harris Trust & Savings Bank v. Salomon Smith Barney, Inc.* The Court held in that case that a fiduciary may sue for "appropriate equitable relief" under ERISA Section 502(a)(3) against a nonfiduciary "party in interest" to a prohibited transaction under ERISA Section 406.[29] The *Everhart* dissent further noted that, in reaching that determination, the Court had reasoned that "there is 'no limit on the universe of proper defendants' where the statute does not establish one."[30]

The majority in *Everhart* was unimpressed. The Supreme Court, the majority noted, had also observed in *Harris Trust* that "ERISA's comprehensive and reticulated scheme warrants a cautious approach to inferring remedies not expressly authorized by the text,"[31] and ultimately the Court turned to the language in another ERISA section as providing authorization for breach of fiduciary suits against nonfiduciaries. The *Everhart* majority asserted that "no similar express authorization to reach third parties exists for [ERISA Section 502(a)(1)(B)]."[32]

THE LEGISLATIVE HISTORY

As you can see, the courts have not provided a clear answer to the question of whom a plaintiff should sue on an ERISA benefits claim. To answer the question, the days leading up to the passage of the statute must be explored. The ERISA drafters intended for the plan to be the only proper party defendant to an ERISA claim for benefits.

Congress's Departure From the Law of Trusts

Many pension plans in existence before ERISA was enacted were multiemployer or Taft-Hartley plans. These plans were subject to the Taft-Hartley Labor Act or Labor-Management Relations Act of 1947 (LMRA). Such plans were and are jointly represented and governed by a board of trustees with labor and management equally represented.

At that time, the board of trustees, not the trust itself, was the party that was sued to enforce rights under the trust.

This was consistent with the general precepts of trust law. Under trust law, it is the trustee, not the trust, who is the proper party to a suit in equity to enforce rights under the trust. As such, the trustee can be held personally responsible for the payment of benefits under the trust. The trust itself is not recognized as a legal entity that can sue or be sued in its own name.[33] The trust does not hold the same legal status as a corporation or an association.[34]

Congress had every opportunity to follow the law of trusts in drafting ERISA Section 502(d).[35] In this respect, if Congress had followed trust law principles, it simply would have provided that the trustee is the party responsible for the payment of benefits under the plan. Congress, however, did not do this when it enacted ERISA. Instead, under ERISA Section 502(d)(1), Congress made the plan, not the trustee, the entity subject to a lawsuit.[36] By doing this, Congress reversed the rule under trust law that a trustee is the proper party to a suit and can be held personally responsible for the payment of benefits under the trust. Rather, under ERISA Section 502(d)(1), Congress treated the plan like a corporation, meaning that under federal law, the plan is a "person" that can sue or be sued in its plan name.

As part of this departure from the law of trusts, under ERISA Section 502(d)(2), Congress provided that the plan alone is responsible for the payment of benefits. Accordingly, this subsection provides, in relevant part, that "[a]ny money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity . . . "[37] ERISA Section 502(d)(2) thereby alters the old trust rule of "personal" liability and turns it into a rule of "corporate" liability; the plan is the only one who can be compelled to pay benefits.

Congress's Reliance on LMRA Section 301

Congress did not start from a blank slate when it reshaped these trust law rules. Congress, in fact, had drawn on language found in the LMRA. LMRA Section 301 provides a right to enforce a breach of a collective bargaining agreement between an employer and a union. The relevant language of LMRA Section 301(b) is almost identical to ERISA Section 502(d). Indeed, LMRA Section 301(b) provides that "[a]ny such labor organization may sue or be sued as an entity . . . [and] any money judgment against a labor organization . . . shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets . . . ."[38] ERISA Section 502(d)(1) similarly provides that "[a]n employee benefit plan may sue or be sued . . . as an entity . . . [and]

[a]ny money judgment . . . against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity . . . .")[39]

This is not simply a coincidence. It is evident from ERISA's legislative history that Congress intended to model ERISA Section 502(a)(1)(B) after LMRA Section 301. The Conference Report on ERISA makes clear that "with respect to suits to . . . recover benefits under the plan . . ., they . . . are to be regarded as arising under the laws of the [U.S.] in similar fashion to those brought under [LMRA] [S]ection 301").[40] A major sponsor of the legislation confirmed at the time that actions involving claims for benefits "will be regarded as arising under the laws of the [U.S.], in similar fashion to those brought under [LMRA] [S]ection 301. . . ."[41]

With respect to LMRA Section 301(b), it was intended to treat a union the same as a corporate entity and provide union officers, like corporate officers, protection against personal liability for union acts. The Senate report describing the legislation said that under LMRA Section 301, "members of the union would secure all the advantages of limited liability without incorporation."[42] As the Supreme Court explained in *Atkinson v. Sinclair Refining Co.*,[43] Congress wanted to prevent a recurrence of the Danbury Hatters case.[44]

In that case, an action was brought by a manufacturer against union officials to recover losses the manufacturer had sustained from a union boycott of the manufacturer's products. The union was not named as a party because the view was that the union, as an unincorporated association, could not be sued. Thus, a large monetary judgment was entered against individual union officials for their participation in the boycott.[45] In the debates over the passage of the LMRA, a chief sponsor of the legislation proclaimed that "by providing that the union may sue and be sued as a legal entity . . . and that liability for damages will lie against union assets only, [LMRA Section 301] will prevent a repetition of the Danbury Hatters case . . ."[46] Therefore, Congress added LMRA Section 301(b) to clarify that "the union as an entity, like a corporation, . . . [was] the sole source of recovery for injury inflicted by it."[47]

We believe Congress's heavy reliance on LMRA Section 301 shows its unmistakable intent to have the plan, like the union, be the sole avenue for relief under ERISA Section 502(a)(1)(B). There is no doubt that Congress was influenced by the Danbury Hatters case and wanted to avoid the situation where individual or corporate fiduciaries could be held personally responsible to pay benefits from a depleted trust. By changing the common law trust rule, Congress ensured that an individual trustee would not be the insurer of a plan if it went insolvent, any more than the directors or shareholders of a corporation are guarantors of a corporation's solvency.

Given that the language of the two statutory sections is virtually identical, we think Congress intended that the provisions share the same meaning.[48] In fact, you do not have to look any further than the terms of ERISA to find ample support for this conclusion. As noted, ERISA Section 502(d)(1) specifies that a plan can be sued. It further provides that a participant can effectuate service of process on a plan by serving the trustee or administrator of the plan.[49] The statute even provides that where the plan document does not designate an agent for service of process, "service upon the Secretary shall constitute such service."[50] Finally, the statute provides an enforcement mechanism for execution of a money judgment against a plan.[51] We do not understand why Congress would have provided this "how-to" manual on suing a plan for benefits if it had not, in fact, intended for a plan to be the only party that can be sued.

THE *HUNT* DECISION

In the interest of full disclosure, a conclusion at this point would be remiss. In *Hunt v. Hawthorne Associates*, the Eleventh Circuit made a forceful argument that under ERISA only the administrator of the plan can be sued and no one else.[52] In defending its position, the Eleventh Circuit reasoned that you cannot sue the plan because a claim for benefits brought under ERISA Section 502(a)(1)(B) is inherently equitable in nature. Thus, the Eleventh Circuit concluded that claims for equitable relief under ERISA Section 502(a)(1)(B) cannot be enforced against plans because ERISA Section 502(d)(2) provides, in relevant part, that "[a]ny *money judgment* . . . against an employee benefit plan shall be enforceable only against the plan."[53]

We think, nonetheless, that *Hunt* rests on a faulty premise. We do agree that a claim under ERISA Section 502(a)(1)(B) is inherently equitable. This is why the Eleventh Circuit and its sister circuits have uniformly found that there is no right to a jury trial with respect to such claims.[54] We disagree, however, with *Hunt* that a claim under ERISA Section 502(a)(1)(B) could never result in an order compelling a defendant to pay a sum of money. The equity courts routinely granted orders for a trustee to pay money to a beneficiary.[55] Of course, a beneficiary of a trust could, under some circumstances, maintain an action at law against a trustee to pay a monetary sum. Even so, this does not exclude a beneficiary from opting to pursue monetary relief against a trustee in a suit in equity.[56] Thus, Congress did not foreclose participants from obtaining money judgments against plans under ERISA Section 502(a)(1)(B) since such relief is available in equity.

The Supreme Court's decision in *Great-West Life & Annuity Ins. Co. v. Knudson*[57] reinforces this view. In *Knudson*, the Supreme Court ruled that the plaintiff could not pursue a legal restitution claim under ERISA Section 502(a)(3), authorizing a participant, beneficiary, or fiduciary to file a civil action "to obtain other appropriate equitable relief." The Supreme Court reasoned, among other things, that the ERISA Section 502(a)(3) express reference to "appropriate equitable relief" limited relief to those categories that "were *typically* available in equity."[58] A "typical" remedy means the categories of remedies that were the unique creation of the equity courts, as opposed to remedies that the equity courts borrowed from the courts at law (i.e., monetary awards). As *Knudson* points out, Congress did not impose the same limitation on the equitable relief available under ERISA Section 502(a)(1)(B).[59]

This reading of the statute gives meaning to all of its provisions including the "money judgment" clause of ERISA Section 502(d)(2). Indeed, if equitable claims for benefits cannot be brought against plans because they are not enforceable, then the "money judgment" clause would effectively be read out of the statute. We doubt this is what Congress intended to do.[60]

CONCLUSION

In the final analysis, there is a straightforward answer to the question of who is sued in an ERISA benefits case. The challenge for practitioners and their clients is attempting to make sense of the courts' inconsistent and contradictory decisions on the subject. Notwithstanding the complicated thicket of case law, the way to untangle the problem is to look at the words, structure, and history of ERISA. Once the thicket is cleared, it is clear that the ERISA plan is the only party that Congress intended to be sued.

NOTES

1. ERISA § 2(b), 29 U.S.C. § 1001(b).

2. *See* S. Rep. No. 93-127, at 35 (1973).

3. 29 U.S.C. § 1132(a)(1)(B).

4. The Supreme Court has recognized that a participant can sue to recover benefits due under ERISA § 502(a)(1)(B), as well as to "enforce" or "clarify rights" by obtaining a declaratory judgment or injunction. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146–147 (1985).

5. 29 U.S.C. § 1132(d)(1).

6. 29 U.S.C. § 1132(d)(2).

7. 88 F.3d 1482, 1490 (7th Cir. 1996).

8. 245 F.3d 941, 949 (7th Cir. 2001) (quoting *Jass*, 88 F.3d at 1490); *see also Moffat v. Unicare Health Ins. Co. of the Midwest*, 352 F. Supp.2d. 873, 878 (N.D. Ill. Jan. 20, 2005) ("[T]he general rule of the Seventh Circuit applies and the plan entity is the proper defendant for [plaintiff's] claim under ERISA § 502(a)(1)(B).").

9. 761 F.2d 1323, 1324 (9th Cir. 1985).

10. *See, e.g., Gibson v. Prudential Ins. Co.*, 915 F.2d 414, 417 (9th Cir. 1990); *Madden v. ITT Long Term Disability Plan for Salaried Employees*, 914 F.2d 1279, 1287 (9th Cir. 1990).

11. *Lee v. Burkhart*, 991 F.2d 1004, 1009 (2d Cir. 1993) (deciding that § 502(a)(1)(B) allows suits against the plan only); *Ross v. Rail Car America Group Disability Income Plan*, 285 F.3d 735, 740 (8th Cir. 2002) ("The employee benefit plan itself is ordinarily liable for benefits payable under the terms of the plan and is thus the primary defendant in a § 502(a)(1)(B) action.").

12. *See, e.g., Law v. Ernst & Young*, 956 F.2d 364, 373–374 (1st Cir. 1992) (employer overseeing administration of the plan is subject to a suit to recover benefits); *Curcio v. John Hancock Mut. Life Ins. Co.*, 33 F.3d 226, 233 (3d Cir.1994) (ERISA also allows actions to recover benefits against a fiduciary of the plan, and the plan administrator is such a fiduciary); *Mitchell v. Eastman Kodak Co.*, 113 F.3d 433 (3d Cir. 1997) (permitting an ERISA Section 502(a)(1)(B) action against a plan administrator to recover benefits); *Daniel v. Eaton Corp.*, 839 F.2d 263, 266 (6th Cir. 1988); *Magin v. Monsanto Co.*, 420 F.3d 679, 686 (7th Cir. Oct. 11, 2005) ("[W]e have allowed suits against the employer in its role as plan administrator"); *Layes v. Mead Corp.*, 132 F.3d 1246, 1249 (8th Cir. 1998) (allowing a § 502(a)(1)(B) action against a plan administrator); *Hall v. LHACO, Inc.*, 140 F.3d 1190, 1194 (8th Cir. 1998); *Taft v. Equitable Life Assurance Society*, 9 F.3d 1469, 1471 (9th Cir. 1993) (party "may bring a civil action [to recover benefits] against a plan administrator"); *Rosen v. TRW, Inc.*, 979 F.2d 191, 193–194 (11th Cir. 1992) (party administering the plan can be sued for benefits).

13. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

14. ERISA § 3(16)(B)(i), 29 U.S.C. § 1002(16)(B)(i).

15. ERISA § 101(b), 29 U.S.C. § 1001(b).

16. ERISA § 104(b), 29 U.S.C. § 1004(b).

17. ERISA § 606, 29 U.S.C. § 1166.

18. ERISA § 502(c)(1), 29 U.S.C. § 1132(c)(1); 29 C.F.R. § 2575.502c-1.

19. ERISA § 502(c)(2), 29 U.S.C. § 1132(c)(2); 29 C.F.R. § 2575.502c-2.

20. 839 F.2d at 266.

21. *Id.*

22. 132 F.3d at 1249.

23. *Id.*

24. 956 F.2d at 373.

25. 979 F.2d at 193.

26. *Penrose v. Hartford Life & Accident Ins. Co.*, No. 02 C 2541, 2003 WL 21801214, at *3 (N.D. Ill. Aug. 4, 2003).

27. *Rivera v. Network Heath Plan of Wisconsin,* 320 F. Supp.2d 795, 800–801 (E.D. Wis. 2004).

28. 275 F.3d 751, 754 (9th Cir. 2001); *see also Ford v. MCI Communications Corp. Health and Welfare Plan*, 399 F.3d 1076, 1081 (9th Cir. Feb. 28, 2005) (citing *Everhart* for proposition that ERISA authorizes suits to recover benefits against only the plan or the plan's administrator as ERISA defines the term).

29. 530 U.S. 238, 246 (2000).

30. *Everhart,* 275 F.3d at 757 (J. Reinhart dissenting) (quoting *Harris Trust*, 530 U.S. at 246).

31. *Harris Trust,* 530 U.S. at 247.

32. *Everhart,* 275 F.3d at 754–755 n.3.

33. Austin W. Scott and William F. Fletcher, *The Law of Trusts,* § 280 (4th ed. 1989) ("Scott on Trusts").

34. *Allegis Group, Inc. Contractors Health Plan Trust v. Connecticut Gen. Life Ins. Co.*, No. Civ. JFM-04-16, 2004 WL 1289862, at *2 (D. Md. June 10, 2004) ("A trust generally is not recognized as a separate legal entity with the capacity to sue or be sued in its own name.").

35. Indeed, the Supreme Court has noted that "ERISA's roots [are] in the common law of trusts." *Mertens v. Hewitt Associates*, 508 U.S. 248, 255 (1993).

36. *See* 29 U.S.C. § 1132(d)(1) ("An employee benefit plan may sue or be sued . . . as an entity.").

37. 29 U.S.C. § 1132(d)(2).

38. 29 U.S.C. § 185 (b).

39. 29 U.S.C. § 1132(d)(1)-(2).

40. *See* H.R. Conf. Rep. No. 93-1280, at 327.

41. 120 Cong. Rec. 29933 (1974) (remarks of Sen. Williams); *see also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003) ("[T]he legislative history of ERISA unambiguously described an intent to treat [§ 502(a)] actions 'as arising under the laws of the [U.S.] in similar fashion to those brought under [LMRA S]ection 301'").

42. S. Rep. No. 105, 80th Cong., 1st Sess., at 16 (1947).

43. 370 U.S. 238, 248 (1962).

44. *See Lowe v. Lawlor*, 208 U.S. 274 (1908).

45. *Id.*, at 534.

46. *Atkinson*, 370 U.S. at 1324–1325 (quoting legislative history).

47. *Id.*, at 249 (quotations omitted); *see also Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 426 (1981) (J. Burger dissenting) ("Congress intended this provision [LMRA § 301(b)] to give union members a protection analogous to that afforded stockholders in corporations against personal liability for corporate acts.").

48. *See Metropolitan Life Ins. Co. v. General Motors Corp.*, 481 U.S. 58, 66 (1987) (recognizing a "presumption that similar language in two labor statutes has a similar meaning.").

49. 29 U.S.C. § 1132(d)(1) ("Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan.").

50. *Id.*

51. 29 U.S.C. § 1132(d)(2).

52. 119 F.3d 888, 907 (11th Cir. 1997).

53. *Hunt,* 119 F.3d at 908 (quoting 29 U.S.C. § 1132(d)(2) (emphasis added)).

54. *See, e.g., Hampers v. W.R. Grace & Co., Inc.*, 202 F.3d 44, 54 (1st Cir. 2000); *Tischmann v. ITT/Sheraton Corp.*, 145 F.3d 561, 568 (2d Cir. 1998); *Cox v. Keystone Carbon Co.*, 894 F.2d at 647, 649–650 (3d Cir. 1990); *Biggers v. Wittek Indus., Inc.*, 4 F.3d 291, 298 (4th Cir. 1993); *Borst v. Chevron Corp.*, 36 F.3d 1308, 1324 (5th Cir. 1994); *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 616 (6th Cir. 1998); *Wardle v. Central States, Southeast & Southwest Areas Pen. Fund*, 627 F.2d 820, 829–830 (7th Cir. 1980); *In re Vorpahl*, 695 F.2d 318, 321–322 (8th Cir. 1982); *Thomas v. Oregon Fruit Products Co.*, 228 F.3d 991, 996 (9th Cir. 2000); *Adams v. Cyprus Amax Minerals Co.*, 149 F.3d 1156, 1160–1161 (10th Cir. 1998); *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525, 1526 (11th Cir. 1990).

55. *See* Scott on Trusts § 198.3.

56. *Id.*, § 199.1 ("Normally, . . . the beneficiary's remedies are exclusively in equity, and even though he may have a remedy at law he is not compelled to pursue it but is entitled to relief in equity. And in equity the court will . . . give him damages . . .").

57. 534 U.S. 204 (2002).

58. *Id.*, at 219 (quoting *Mertens*, 508 U.S. at 256).

59. *Id.*, at 220–221 ("In the very same section of ERISA as [ERISA] § 502(a)(3), Congress authorized 'a participant or beneficiary' to bring a civil action [under ERISA § 502(a)(1)(B) 'to enforce his rights under the terms of the plan,' without reference to whether the relief sought is legal or equitable.").

60. *Id.*, at 217–218 ("[I]t *is* our job to avoid rendering what Congress has plainly done . . . devoid of reason and effect.") (emphasis in original).