ERISA AND THE EXHAUSTION DILEMMA: WHEN MUST PLAINTIFFS EXHAUST ADMINISTRATIVE REMEDIES BEFORE FILING SUIT?

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I. INTRODUCTION

The Employee Retirement Income Security Act of 1974 (ERISA) established federal standards to govern the administration of employee benefit plans.[1] ERISA is a statutory scheme designed to safeguard the pension and welfare benefits of working Americans.[2] An issue that often arises is whether an employee must exhaust administrative remedies under an ERISA plan before turning to the courts for relief when a violation occurs. The circuit courts are split on the issue.

The Third, Ninth, and Tenth Circuits have held that exhaustion is not required[3] because there is no internal appeal procedure either mandated or recommended by ERISA.[4] Furthermore, these two circuits concluded the interpretation of ERISA is a task for the judiciary.[5] In contrast, the Seventh and Eleventh Circuits have required a claimant to exhaust his administrative remedies before bringing a claim in court. These circuits interpreted the legislature's intent in enacting ERISA, including a claims procedure section, to require employees to exhaust their administrative remedies before filing a lawsuit.[6]

This essay argues that the Seventh and Eleventh Circuits' approach is correct in that a claimant must exhaust administrative remedies before bringing a claim in federal court. Part II describes the relevant

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1 Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified at 29 U.S.C. §§ 1001-1461).

2 *Id.* § 2(b)-(c).

3 *See, e.g.*, Held v. Mfrs. Hanover Leasing Corp., 912 F.2d 1197, 1205 (10th Cir. 1990); Amaro v. Cont'l Can Co., 724 F.2d 747, 750-52 (9th Cir. 1984); *see also* Smith v. Snydor, 184 F.3d 356, 364 (4th Cir. 1999) (noting that the Tenth Circuit does not require exhaustion for an ERISA § 510 claim); Richards v. Gen. Motors Corp., 991 F.2d 1227, 1235 (6th Cir. 1993); Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990) (citing the Ninth Circuit as a court that recognizes a futility exception to the exhaustion requirement).

4 *See Amaro*, 724 F.2d at 751.

5 *Id.*

6 *See* Lindemann v. Mobil Oil Corp., 79 F.3d 647, 650 (7th Cir. 1996).

provisions of ERISA. Part III discusses the cases that have defined the circuit split. Part IV analyzes this split and explains why the Seventh and Eleventh Circuits' view is superior.

II. BACKGROUND OF ERISA

ERISA was designed to promote the interests of employees and their beneficiaries in employee benefit plans while also protecting contractually defined benefits.[7] Congress created disclosure provisions to ensure "the individual participant knows exactly where he stands with respect to the plan."[8] Employee benefit programs had been historically difficult to understand, thus ERISA set forth guidelines governing these programs and making the plans easier to decipher. ERISA also preempted state regulation and established federal standards to govern the administration of employee benefit plans.[9]

Section 502(a)(1)(B) of ERISA provides a federal forum for plan participants alleging improper denial of benefits under the terms of the plan.[10] Section 502(a)(3) permits participants to obtain relief for violations of ERISA's substantive standards of conduct.[11] There is no statutory requirement in ERISA for exhaustion of administrative remedies before bringing a suit based on rights granted by ERISA. ERISA, however, does specify that every employee benefit plan shall provide for a specific appeal procedure:

> In accordance with regulations of the Secretary, every employee benefit plan shall—
> (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and
> (2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.[12]

III. CIRCUIT SPLIT

A. Exhaustion Is Not Required

The Third, Ninth, and Tenth Circuits have all held a claimant need not exhaust his administrative remedies before bringing a claim under ERISA.

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7 Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 113 (1989).

8 *Id.* at 118 (quoting H.R. REP. NO. 93-533, at 11 (1973)).

9 Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified at 29 U.S.C. §§ 1001-1461).

10 § 502(a)(1)(B).

11 § 502(a)(3).

12 29 U.S.C. § 1133.

1. The Ninth Circuit

The Ninth Circuit held a participant within the meaning of section 3 of ERISA is not required to exhaust grievance or arbitration procedures before bringing an action under section 510 of ERISA.[13] In *Amaro v. Continental Can Corp.*, the plaintiffs, former employees, were laid off from the defendant company and brought suit alleging the defendant violated ERISA.[14]

The plaintiffs had all been laid off from the company's Los Angeles plant between 1976 and 1984.[15] The employees' union representative, United Steel Workers of America (Union), filed several grievances alleging that Continental's layoff violated provisions of their collective bargaining agreement.[16] In addition, the complaint alleged that Continental violated section 510 of ERISA by laying off employees to prevent them from obtaining the number of years of continuous employment required to qualify for Continental's Employee Pension Benefit Plan and Employee Welfare Plan.[17]

Since the plaintiffs did not complete the grievance process as required by Continental, the Court of Appeals for the Ninth Circuit was also confronted with the issue of whether the employees' failure to exhaust their contractual remedies barred their section 510 claim.[18] The court noted the question was not whether the plaintiffs had exhausted their contractual claims, but if they were required to do so before bringing a section 510 claim.[19]

The court rejected the defendant's argument that a section 510 ERISA claim is essentially a contractual claim for a breach of an implied covenant of good faith.[20] The court also rejected the argument that a section 510 claim is one for benefits under a collective bargaining agreement.[21] Instead, the court held that a section 510 "ERISA action is to enforce statutory rights designed to protect the employee from actions which interfere with their attainment of eligibility for [certain] benefits."[22] The court reasoned that in enacting section 510, Congress

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13 Amaro v. Cont'l Can Co., 724 F.2d 747, 752 (9th Cir. 1984).

14 *Id.* at 747.

15 *Id.*

16 *Id.* at 748.

17 *Id.*

18 *Id.* at 750.

19 *Id.*

20 *Id.* at 749.

21 *Id.*

22 *Id.*

created a statutory right independent of any collectively bargained rights.[23]

The Ninth Circuit was persuaded by the United States Supreme Court's holdings in *Alexander v. Gardener-Denver Co.*[24] and *Barrentine v. Arkansas-Best Freight System, Inc.*[25] In *Alexander*, the Supreme Court held that a prior arbitration decision did not foreclose a Title VII action.[26] In *Barrentine*, the Supreme Court extended this holding beyond Title VII to a case involving the Fair Labor Standards Act (FLSA).[27]

The Ninth Circuit reasoned that Congress intended that minimum standards be provided to ensure the equitable character of employee benefit plans.[28] Further, the court determined that Congress did not intend these minimum standards to be eliminated by contract.[29] As such, the court concluded that Congress did not intend section 510 of ERISA to be waivable.[30] Forcing participants to engage in grievance or arbitration procedures, most of which cannot grant the broad relief available under ERISA, violates the participants' non-waivable statutory rights.[31] The Supreme Court's willingness to extend the *Alexander* doctrine to statutory claims other than those arising under the Civil Rights Act indicates these rights were upheld not because of substance but because they were non-waivable statutory rights.[32] Contracts concerning these rights can be made, but realistic limits will be placed on those contracts when they conflict with such rights.[33] Thus, the judicial process must be used to safeguard the statutory rights of individuals.

In holding for the plaintiffs, the Ninth Circuit concluded that a participant in an employee benefit plan is not required to exhaust grievance or arbitration procedures before bringing an action under section 510 of ERISA.[34] In contrast, the Tenth Circuit stated that requiring a plaintiff to pursue a claim through administrative measures with an employer who has engaged in conduct that is coercive in nature would serve little purpose.[35] The Ninth Circuit, however, concluded that

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23 *Id.* (citing Kross v. W. Elec. Co., Inc., 701 F.2d 1238, 1242-43 n.2 (7th Cir. 1983)).

24 Alexander v. Gardener-Denver Co., 415 U.S. 36 (1974).

25 Barrentine v. Ark.-Best Freight Sys., Inc., 450 U.S. 728 (1981).

26 *Alexander*, 415 U.S. at 57-58.

27 *Barrentine*, 450 U.S. at 745.

28 *Amaro*, 724 F.2d at 752.

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *See* Held v. Mfrs. Hanover Leasing Corp., 912 F.2d 1197, 1205 (10th Cir. 1990).

arbitrators lack the competence of courts to interpret and apply statutes as Congress intended.[36]

It is important to note that the Ninth Circuit's reasoning has not been adopted by any other circuit. Additionally, the Supreme Court has rejected the Ninth Circuit's analysis in *Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, Inc.*[37] and *Gilmer v. Interstate/Johnson Lane Corp.*[38] The Supreme Court stated in *Gilmer* that nothing prevents contracting parties from including a provision in their agreements referring statutory claims arising under the contract to arbitration.[39] Moreover, the Supreme Court stated that the party seeking to avoid arbitration bears the burden of establishing that Congress intended to preclude arbitration for a statutory claim.[40] The Supreme Court rejected the reasoning of the Ninth Circuit: "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration."[41]

2. The Third Circuit

The Third Circuit does not require exhaustion of administrative remedies when resort to the administrative process would be futile.[42] In *Berger v. Edgewater Steel Co.*,[43] employees were not required to exhaust administrative remedies before seeking judicial relief based upon their claim that Edgewater's amendment of their employee pension plan violated section 510 of ERISA.[44]

In *Berger*, former employees challenged Edgewater Steel's decision to eliminate certain benefits under its Noncontributory Pension Plan for salaried employees (Plan).[45] Edgewater Steel had been facing serious financial difficulty.[46] To cut costs, the company decided to eliminate a number of benefits under the Plan.[47] The Plan was a defined benefit, single employer, qualified plan, subject to vesting, funding, and participation requirements of the Internal Revenue Code and ERISA.[48]

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36 *See Amaro*, 724 F.2d at 750.

37 *See* Mitsubishi Motors v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626-27 (1985).

38 *See* Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991).

39 *Id.* at 26.

40 *Id.*

41 *See* Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983).

42 Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990).

43 *Id.*

44 *Id.*

45 *Id.* at 913-15.

46 *Id.* at 913.

47 *Id.*

48 *Id.* at 914.

Edgewater Steel management eliminated two benefits from the Plan, the "special payment" portion of its pension benefits and a $330 per month supplement associated with its "70/80 retirement," an early retirement benefit.[49]

Before these changes, a pension-eligible employee who retired from Edgewater Steel had his pension benefits paid out in two forms. First, the special payment portion, consisting of a lump sum equal to thirteen weeks of vacation pay, was given to the retiring employee at the end of the month for the first three months of the pension.[50] The second form, regular pension, began after the retiree's first three months.[51]

A qualified employee for 70/80 retirement was entitled to the special payment portion and regular pension.[52] Additionally, the employee's regular pension amount increased by $330 per month.[53] Under the Plan, an employee could receive 70/80 retirement if the employee's retirement was in the mutual interest of the employee and the company.[54] The Plan also required approval by the company under mutually satisfactory conditions before an employee could retire.[55]

The claims procedure under the Plan required an employee to submit a written claim for benefits to the Pension Board.[56] If denied, the Pension Board had to give written notice of the specific reasons for denying the claim.[57] The claimant could then make a written request to the Pension Board for review of the denial.[58]

Following the changes to the Plan, several employees advised Edgewater Steel of their intent to retire.[59] Edgewater Steel promptly responded by stating no 70/80 retirements would be approved under the mutual benefit provision.[60] In effect, the company adopted a blanket policy for denying all requests for 70/80 retirement.[61] The employees filed a complaint against Edgewater Steel claiming violations of ERISA.[62] They argued "the amendment of the Plan violated section 510 of ERISA,

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49 *Id.*
50 *Id.*
51 *Id.*
52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.*
56 *Id.*
57 *Id.*
58 *Id.*
59 *Id.* at 915.
60 *Id.*
61 *Id.*
62 *Id.*

which proscribes discrimination for the purpose of interfering with the attainment of a plan benefit."[63]

The District Court for the Western District of Pennsylvania, in holding for the employees, determined that resorting to the Plan's administrative remedies would have been futile.[64]

> In applying the futility exception to [the employees' cases], the district court concluded: (1) the evidence showed the denial of 70/80 retirement was a "fixed policy"; (2) Edgewater's failure, even after a specific request, to provide written notice or specific reasons for the denial weighed in favor of applying the futility exception; (3) the testimony of . . . a member of Edgewater Steel's Pension Board, that . . . any administrative appeal was futile, was particularly significant; and (4) these employees under the circumstances acted reasonably in seeking immediate judicial review.[65]

On appeal, the Third Circuit Court of Appeals upheld the district court's decision exempting these three employees from the exhaustion requirement.[66]

3. The Tenth Circuit

The Tenth Circuit has also held that a plaintiff need not exhaust administrative remedies before bringing an action under section 510 of ERISA.[67] In *Held v. Manufacturers Hanover Leasing Corp.*, John Held filed a complaint against Manufacturers Hanover Leasing Corporation (MHLC) alleging MHLC discharged him after ten years of employment to prevent him from attaining vested rights under the MHLC retirement plan.[68]

Held began employment with MHLC on February 3, 1975. He resigned on July 13, 1984, although his salary continued until October 9 of that year.[69] Held's resignation came after a supervisor informed him that his position with MHLC would not be continued.[70] On July 25, 1988, Held filed a complaint alleging "MHLC coerced him to resign from his position shortly before completion of the ten years of service required for a non-forfeitable vested right in accrued benefits" under the ERISA employee benefit plan.[71]

While the case was filed in the District Court of Colorado, MHLC argued Held's claim was barred under New York's statute of

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63 *Id.*

64 *Id.* at 916.

65 *Id.* at 916-17.

66 *Id.* at 917.

67 Held v. Mfrs. Hanover Leasing Corp., 912 F.2d 1197, 1205 (10th Cir. 1990).

68 *Id.* at 1199.

69 *Id.* at 1198.

70 *Id.* at 1199.

71 *Id.*

limitations.[72] Since MHLC was headquartered in New York, the court determined New York had the most significant relationship to the claim and, therefore, New York law applied.[73] To determine when Held's cause of action accrued, the court first had to address whether administrative remedies had to be exhausted before filing a claim.[74] The court found the plaintiff was not required to exhaust these remedies.[75]

The Tenth Circuit affirmed the decision of the District Court of Colorado.[76] The court determined the appellant had clearly raised a claim under the statute, alleging in his complaint that a "purpose of the defendant in coercing the plaintiff's resignation was to prevent the plaintiff from receiving retirement benefits under the defendant's pension plan."[77] Furthermore, the court stated requiring the plaintiff to press this claim with MHLC before bringing a legal action would serve little purpose.[78] The Tenth Circuit held a participant in an employee benefit plan is not required to exhaust grievance or arbitration procedures before bringing an action under section 510 of ERISA.[79]

This court's decision differs from the Third Circuit's in one major respect: the Third Circuit found exhaustion of administrative remedies was the general rule but allowed an exception when such remedies were futile.[80] In contrast, the Tenth Circuit stated as a blanket rule that exhaustion is not required.[81]

B. Exhaustion Is Required

In contrast to the Third, Ninth, and Tenth Circuits' approach, the Seventh and Eleventh Circuits do require exhaustion of administrative remedies before bringing a claim in court.

1. The Seventh Circuit

The Seventh Circuit requires a plaintiff to exhaust his administrative remedies on an ERISA claim before pursuing that claim in federal court.[82] In *Lindemann v. Mobil Oil Corp.*, Diane Lindemann had been employed by Mobil Oil Corporation (Mobil) for seventeen years

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72 *Id.*

73 *Id.*

74 *Id.* at 1204.

75 *Id.*

76 *Id.*

77 *Id.*

78 *Id.*

79 *Id.* at 1205.

80 Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990).

81 *Id.*

82 Lindemann v. Mobil Oil Corp., 79 F.3d 647, 650 (7th Cir. 1996).

when her employment was terminated.[83] Lindemann had taken twenty-six "sick days" in the two years before her termination, and was compensated for these days under Mobil's employee benefits plan.[84] In May, 1994, Lindemann called her supervisor and requested she be allowed to miss work that day.[85] Although the request was denied, Lindemann did not go to work.[86] As a result of Lindemann's unexcused absence and her failure to show up for work the next day, she was fired.[87]

In a letter Lindemann, Mobil stated she was being terminated because she was "unable to fulfill the duties and responsibilities of [her] job" as she was not at work regularly and on time.[88] Later in June, 1994, Lindemann filed a claim for benefits with Mobil stating she believed she was entitled to severance pay.[89] Lindemann claimed she was unable to go to work on May 31 and June 1 because she was sick and under the care of two doctors.[90] Mobil reviewed Lindemann's claim and determined she was ineligible for separation benefits because she had been terminated "for cause."[91]

Lindemann filed a lawsuit against Mobil alleging she was terminated in violation of section 510 of ERISA.[92] Section 510 prohibits only the termination of a plan participant for the purpose of interfering with "the attainment of any right to which such participant may become entitled."[93] In essence, Lindemann claimed Mobil violated section 510 by terminating her employment for the purpose of interfering with her right to use sick days.[94]

Lindemann made two arguments as to why her failure to exhaust her administrative remedies should not bar her federal claim.[95] Lindemann first argued the Seventh Circuit should establish an exception to the exhaustion requirement for situations such as hers.[96] Lindemann argued that where a plaintiff's claim is for wrongful discharge, seeking only reinstatement and back pay, an administrator's

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83 *Id.* at 648.
84 *Id.*
85 *Id.*
86 *Id.* at 648-49.
87 *Id.* at 649.
88 *Id.*
89 *Id.*
90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.* (quoting 29 U.S.C. § 1140).
94 *Id.*
95 *Id.*
96 *Id.*

interpretation of the plan is immaterial.[97] She contended the Third, Ninth, and Tenth Circuits created a distinction between claims for benefits, which require exhaustion, and claims based on ERISA, which do not.[98]

The Seventh Circuit, however, was not persuaded. Stating an administrator's interpretation of a plan is not the only useful function served by the exhaustion requirement, the court explained this requirement also "enables plan fiduciaries to . . . assemble a factual record which will assist a court in reviewing [their] actions."[99]

The court then turned to Lindemann's second argument: her failure to exhaust administrative remedies should be excused because attempting those remedies would have been futile.[100] To fall within the futility exception to the exhaustion requirement, a plaintiff must prove "it is certain that [her] claim will be denied on appeal, not merely that [she] doubts that an appeal will result in a different decision."[101] Lindemann's only contention for futility was that her ERISA claim was so similar to her claim for separation benefits that Mobil would have denied it as well.[102] The court, however, was not persuaded that Lindemann's claims were sufficiently similar.[103] Therefore, the Seventh Circuit held a plaintiff must exhaust his claims before bringing a federal lawsuit.[104]

2. The Eleventh Circuit

The Eleventh Circuit has also held a plaintiff is required to exhaust his administrative remedies before seeking judicial relief.[105] In *Counts v. American General Life & Accident Insurance Co.*, appellant J.W. Counts worked as an insurance agent and sales manager for American General Life and Accident Insurance Company (AGLA), and its predecessors, from 1965 to 1990.[106] Counts participated in the Gulf Life Fields

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[97] *Id.*

[98] *Id.* at 650; *see, e.g.*, Held v. Mfrs. Hanover Leasing Corp., 912 F.2d 1197, 1205 (10th Cir. 1990); Zipf v. Am. Tel. & Tel. Co., 799 F.2d 889, 893 (3d Cir. 1986); Amaro v. Cont'l Can Co., 724 F.2d 747, 752 (9th Cir. 1984).

[99] *Lindemann*, 79 F.3d at 650 (citing Makar v. Health Care Corp. of Mid-Atlantic, 872 F.2d 80, 83 (4th Cir. 1989)).

[100] *Id.*

[101] *Id.* (quoting Smith v. Blue Cross & Blue Shield United of Wis., 959 F.2d 655, 659 (7th Cir. 1992)).

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] Counts v. Am. Gen. Life & Accident Ins. Co., 111 F.3d 105, 108 (11th Cir. 1997).

[106] *Id.* at 107.

Representative's Long-Term Disability Plan (Plan).[107] The Plan was an employee benefit plan governed by ERISA and administered by AGLA.[108]

Under the Plan, a participant must be totally disabled to receive long-term disability benefits (LTD). The Plan defined total disability as a "sickness or injury which prevents a participant from performing the main duties of his or her regular occupation."[109] The definition changes after twelve months, at which time the participant must be unable to perform "each and every of the main duties of *any* occupation. Any occupation is one that the Participant's training, education, or experience would reasonably allow."[110]

In 1986, Counts injured his back and four years later became totally disabled and stopped working.[111] In November 1990, AGLA began paying Counts's LTD benefits under the Plan.[112] After receiving benefits for twelve months, AGLA suspended Counts's benefits after receipt of an opinion letter from his physician stating that he was not totally disabled.[113]

By a letter dated April 30, 1992, AGLA Disability Committee terminated both Counts's LTD benefits and his employment with AGLA.[114] The letter stated the committee had determined that Counts no longer met the requirements for total disability under the Plan.[115] The letter also stated:

> The Disability Committee decision is final unless overturned by an appeal; therefore, your employment and benefit status will remain terminated during the appeal process.
>
> If you disagree with this determination, you may appeal the decision by sending your written request within 60 days following your receipt of this notice stating the reason for your appeal along with any additional information for review . . . .[116]

Counts did not appeal the decision.[117] Instead, four months after the sixty day appeal period expired, Counts's attorney wrote a letter to AGLA discussing Counts's medical situation and requesting a response.[118] AGLA responded by restating its reasons for discontinuing

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[107] *Id.* "AGLA assumed control of all Gulf Life operations in 1990." *Id.* at 107 n.2.

[108] *Id.* at 107.

[109] *Id.*

[110] *Id.* (quoting the district court order).

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

Counts's benefits.[119] Counts filed his complaint alleging that "AGLA wrongfully discontinued his LTD benefits under the Plan and . . . that AGLA terminated his employment for the purpose of interfering with his rights" under the Plan.[120]

In granting AGLA's motion for summary judgment, the District Court of Georgia stated that Counts failed to exhaust his administrative remedies.[121] The Eleventh Circuit affirmed.[122] That court stated, "The law is clear in this circuit that plaintiffs in ERISA actions must exhaust available administrative remedies before suing in federal court."[123] The Eleventh Circuit, however, stated courts do have discretion to excuse the exhaustion requirement when resorting to administrative remedies would be futile or the remedy inadequate.[124] Since the district court considered these two exceptions and found neither circumstances present, the Eleventh Circuit declined to excuse the exhaustion requirement in this case.

IV. ANALYSIS

Although ERISA does not explicitly require a plaintiff to exhaust administrative remedies before bringing an action, some courts have read the requirement into ERISA.[125] Requiring a plaintiff to exhaust his remedies before bringing an action creates a more efficient judicial system. If claimants were allowed to litigate the validity of their claims before being reviewed by the administrative appeal process, the costs of dispute settlements would steadily rise for employers.[126] Additionally, employees would suffer financially because, rather than utilizing a simple procedure which allows them to deal directly with their employer, they would have to bear the costs of adversarial litigation in the courts.[127]

There are three main reasons why the Seventh and Eleventh Circuits' approach is better than the Third, Ninth, and Tenth Circuits' view. First, it is supported by the language of ERISA. Second, concluding that exhaustion is required before bringing a suit is supported by

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[119] *Id.*

[120] *Id.*

[121] *Id.* at 108.

[122] *Id.* at 109.

[123] *Id.* at 108 (citing Springer v. Wal-Mart Assocs.' Group Health Plan, 908 F.2d 897, 899 (11th Cir. 1990) and Mason v. Cont'l Group, Inc., 763 F.2d 1219, 1225-27 (11th Cir. 1985)).

[124] Curry v. Contract Fabricators, Inc. Profit Sharing Plan, 891 F.2d 842, 846 (11th Cir. 1990).

[125] *See, e.g.*, Folke v. Schaffer, 616 F. Supp. 1322, 1325 (D. Del. 1985).

[126] *See* Taylor v. Bakery & Confectionary Union & Indus. Int'l Welfare Fund, 455 F. Supp. 816, 820 (E.D.N.C. 1978).

[127] *Id.*

ERISA's legislative history. Third, requiring a claimant to pursue extra-judicial remedies before filing suit is supported by practical considerations.

A. Language of ERISA

Section 503 of ERISA requires all employee benefit plans to establish a benefit claims procedure. The statute requires every employee benefit plan to (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the reasons for the denial; and (2) afford participants whose claim has been denied an opportunity for a full and fair review.[128]

By providing for a specific section outlining the claims procedure, Congress indicated that a claimant is required to follow the claims procedure before bringing a suit. Furthermore, "Congress' apparent intent in mandating internal claims procedures found in ERISA was to minimize the number of frivolous lawsuits; . . . promote a non-adversarial dispute resolution process; and decrease the cost and time of claims settlement."[129] Thus, the Seventh and Eleventh Circuits' view that all administrative remedies must be exhausted is superior as a plan's own remedial procedures can resolve many claims, eliminate judicial intervention, and reduce costs. This view balances the overly burdened judicial system with a plaintiff's relatively minor inconvenience of having to pursue his claim administratively. Therefore, the Seventh and Eleventh Circuits' approach is consistent with the language of ERISA.

B. Legislative History of ERISA

In addition to the language of the statute, the legislative history also supports the proposition that exhaustion of administrative remedies is required before bringing a claim. Congress in the legislative history of ERISA indicated an intent that claims arising under the Act would be treated in a similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947 (LMRA).[130] The House Conference Report on ERISA states that "[a]ll such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947."[131] Under LMRA section

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[128] 29 U.S.C. § 1133; *see Taylor*, 455 F. Supp. at 818.

[129] Powell v. AT&T Communications, Inc., 938 F.2d 823, 826 (7th Cir. 1991).

[130] *See* 29 U.S.C. § 185.

[131] H.R. CONF. REP. NO. 93-1280, at 327 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5038, 5107.

301(a), an individual may file suit in federal district court for the "violation of contracts between an employer and a labor organization."[132] LMRA section 203(d), however, establishes the congressional policy favoring final adjustment by a method agreed upon by the parties.[133] In interpreting the language of section 203(d), some courts favored non-judicial, administrative proceedings because they offer "a swifter and cheaper means of sharpening issues and discovering relevant facts than litigation in federal court."[134] The Supreme Court resolved the tension between 301(a) and 203(d) in *Republic Steel Corp. v. Maddox*[135] by stating that exhaustion of administrative grievance procedures is required before filing suit.[136]

Therefore, the Seventh and Eleventh Circuits' view is supported by the Supreme Court's interpretation of congressional intent for the settlement of LMRA claims, which Congress indicated is a pattern for ERISA claims.

C. Practical Considerations

Furthermore, the Seventh and Eleventh Circuits' position is supported by practical considerations. Requiring a claimant to exhaust administrative remedies before bringing suit makes prudential sense.[137] Allowing a claimant to bring an action before exhausting these remedies would nullify section 503 of ERISA. This section prescribes the method and manner by which a claimant must be informed of a denial of benefits and how to appeal such a decision. Allowing a claimant to skip this step would increase the workload of the judicial system.

Besides frustrating the purpose of ERISA, allowing a claimant to proceed to federal court before exhausting administrative remedies may encourage "sandbagging." It would be unfair to allow a claimant to start the administrative proceedings, put forth his claims, and then file a claim in court if he felt things were not proceeding favorably for him. A claimant should not be allowed to defeat the system in hopes of setting the stage for an ambush in court.

V. CONCLUSION

ERISA was designed to improve the quality of employee benefit programs and to provide a remedy for claimants. Not all circuits agree,

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[132] 29 U.S.C. § 185(a).

[133] 28 U.S.C. § 171.

[134] *See, e.g.*, Webb v. County Bd. of Educ., 471 U.S. 234, 252 (1985) (Brennan, J., concurring in part and dissenting in part).

[135] *See* Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965).

[136] *Id.* at 657.

[137] *See* Taylor v. Bakery & Confectionary Union & Indus. Int'l Welfare Fund, 455 F. Supp. 816, 820 (E.D.N.C. 1978).

however, whether a claimant must exhaust his administrative remedies before bringing suit. The Third, Ninth, and Tenth Circuits do not require a claimant to exhaust his administrative remedies before bringing suit. This approach clearly frustrates the purpose of ERISA. On the other hand, the Seventh and Eleventh Circuits utilize the review and appeal process to ensure that a claimant pursues his administrative options before filing suit in an already overburdened judicial system. This approach is supported by the language of ERISA, its legislative history, and practical considerations, making it the better alternative.