

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

DONALD C. RUSCH,

Plaintiff,

v.

MIDWEST INDUSTRIES INC.,

et. al.,

Defendants.

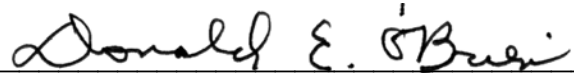
No. 10-CV-4110-DEO

Memorandum and Opinion Order

On July 11, 2012, Plaintiff and Defendant filed Joint Proposed Preliminary and Final Jury Instructions. Docket No. 64. Within those Proposed Instructions, Plaintiff and Defendants disagree as to whether Plaintiff is entitled to a jury trial in relation to his ERISA claim. After careful consideration of the case law cited by both parties, this Court is persuaded that Plaintiff is not entitled to a jury trial on his ERISA claim. The Eighth Circuit has squarely ruled that claims "for present and future benefits under" a retirement plan, as well as other equitable relief, "should properly be tried" by "the court. . . ." In Re Vorpahl, 695 F.2d 318, 322 (8th Cir. 1982); see also Howe v. Varsity Corporation, 36 F.3d 746, 751, fn 2 (8th Cir. 1994). **Therefore, Plaintiff's ERISA claim will not be submitted to the jury, and any reference to retirement benefits or ERISA**

will not be included in any instructions or interrogatories submitted to the jury. This Court will take up Plaintiff's ERISA claim after a jury verdict is received as to Plaintiff's other claims.

IT IS SO ORDERED this 13th day of July, 2012.



Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa