

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WINDSTREAM, Corporation,)
WINDSTREAM NEBRASKA, Inc.,)
WINDSTREAM SYSTEMS OF THE)
MIDWEST, INC., and WINDSTREAM)
BENEFITS COMMITTEE,)

Plaintiffs,)

v.)

ROBERT BERGGREN, Individually and as)
a Representative of Persons Similarly)
Situated, LAURIE BAXTER, NEIL)
BRAUCH, LARRY CHUBB, VIRGINIA)
DANCZAK, KENNETH DARBY, ROY)
EDMONDS, DIANE GIEBELHAUS,)
KENNETH GRAHAM, BONNIE HATRA,)
HOWARD HIGHT, JUDY HIGHT,)
LONNIE HUSING, EDWARD JUNGCK,)
ERVIN MATHER, ROBERT SWAILS,)
MARY WADE, and DALE WEAVER,)

Defendants.)

4:08CV3173

MEMORANDUM AND ORDER ON
PLAINTIFFS' MOTION TO STRIKE JURY
DEMAND

Now before me is the plaintiffs' motion to strike the defendants' jury demand, filing 157. The motion has not been opposed by the defendants, and I find that it should be granted.

The amended complaint and the defendants' counterclaim are based on the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.* (See generally Am. Compl, filing 93; Counterclaim, filing 164, ¶ 21.) As the plaintiffs correctly note, ERISA claims are tried to the court; there is no right to a jury trial on such claims. See, e.g., *Jefferson v. Vickers, Inc.*, 102 F.3d 960, 963 (8th Cir. 1996) (citing *Houghton v. SIPCO, Inc.*, 38 F.3d 953, 957 (8th Cir. 1994)).

IT IS THEREFORE ORDERED that the plaintiffs' motion to strike the defendants' jury demand, filing 157, is granted.

Dated December 31, 2008.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge