

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

STEPHANIE OTT, )
Plaintiff, )
v. ) No. CIV-09-493-FHS
GERBER LIFE INSURANCE COMPANY, )
Defendant. )

OPINION AND ORDER

Defendant, Gerber Life Insurance Company ("Gerber"), has moved to strike the request for jury trial filed by Plaintiff, Stephanie Ott, in this action to recover death benefits under an insurance policy governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). In her response, Ott recognizes that the Tenth Circuit, along with several other circuit courts, has determined that the Seventh Amendment to the United States Constitution does not guarantee a right to a jury trial in a section 1132(a)(1)(B) action for the recovery of benefits. Graham v. Hartford Life & Acc. Ins. Co., 589 F.3d 1345, 1355-57 (10th Cir. 2009) and Adams v. Cyprus Amax Minerals Co., 149 F.3d 1156, 1158 (10th Cir. 1998). Ott therefore concedes, and this Court so finds, that there is no right to a jury trial in this ERISA action brought pursuant to section 1132(a)(1)(B). Consequently, Gerber's Motion to Strike Jury Demand (Docket Entry #9) is granted.

It is so ordered this 4th day of February, 2010.

Handwritten signature of Frank H. Seay
Frank H. Seay
United States District Judge
Eastern District of Oklahoma