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Michael A. Labriola

Lisa C. Scolieri

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Title VII and the "Right" of Trial by Jury

INTRODUCTION

Title VII of the Civil Rights Act prohibits discriminatory employment practices and provides remedies including reinstatement and the recovery of back wages. An issue that has arisen is whether Congress intended that juries hear Title VII cases. The Act itself does not clearly indicate such an intention or lack thereof; however, federal judges have denied requests for jury trial. This comment will demonstrate the tensions that exist in this area and the implications of denying jury trials in Title VII cases.

TITLE VII

Many people believe that Title VII of the Civil Rights Act of 1964 and its subsequent amendment represent the most sweeping legislation in the area of civil rights.¹ It was thought that this legislation would be the catalyst and chief mode of enforcement to equalize civil rights in employment among the citizens of the United States. To this end, Title VII made it unlawful to discriminate on the basis of race, color, religion, sex or national origin.² Private parties or the federal government may enforce the Act as well as interested parties who may join in a suit that has already originated.³ Relief for victims of unlawful employment practices is provided by the Act and includes back pay.⁴ Title VII essentially was the first law enacted by Congress to outlaw discrimination against minorities in private employment, and in order to facilitate this, Title VII created the Equal Employment Opportunity Commission (EEOC).⁵

The ordering of "back pay" is the chief remedy conferred by Title VII and is discretionary with the court.⁶ Many courts have

1. Civil Rights Act, 42 USC § 2000e et seq (1991).

2. *Id.* Title VII bans discrimination on the basis of race, color, religion, sex or national origin, and prohibits segregation of work areas.

3. 42 USC § 2000e-5(f)(1), as amended.

4. 42 USC § 2000e-5(g). Back pay in this comment refers to wages that the court presumes an employee would have earned but for the discriminatory termination.

5. 42 USC § 2000e-4(a).

6. 42 USC § 2000e-5(g). A court may "order such affirmative action as may be ap-

termed the "back pay" provision as an equitable remedy and therefore there is no right to trial by jury.⁷ In *Robinson v Lorillard Corp.*,⁸ the Fourth Circuit reiterated that "back pay" is an equitable remedy with the purpose of restoring victims to the status they would have enjoyed but for the discrimination.⁹ Because courts have determined that "back pay" is an equitable remedy, it was also commonly believed that the litigants were not allowed a jury trial.¹⁰ Therefore, in *Ochoa v American Oil Co.*,¹¹ although the court was sympathetic with the idea of granting a jury trial, a jury trial was denied on the basis of Fifth Circuit Court of Appeals precedent.¹²

SEVENTH AMENDMENT

This brings us squarely to the Seventh Amendment and a determination of what it guarantees when it speaks of "trial by jury." The Seventh Amendment states:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.¹³

In *Curtis v Loether*,¹⁴ the Supreme Court noted that it was primarily the intention behind the Seventh Amendment to preserve the right to trial by jury as it existed in 1791 when the Amendment was originally enacted. However, the Court held that the right to

propriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . or any other equitable relief as the court deems appropriate." Id.

7. Several of these cases will be discussed later in this comment.

8. 444 F2d 791 (4th Cir 1971).

9. *Robinson*, 444 F2d at 802. Other cases holding the same include *Johnson v Georgia Highway Express, Inc.*, 417 F2d 1122 (5th Cir 1969); *United States v Georgia Power Co.*, 474 F2d 906 (5th Cir 1973); *Head v Timken Roller Bearing Co.*, 486 F2d 870 (6th Cir 1973).

10. See 118 Cong Rec S 2278 (daily ed, Feb 22, 1972), where a proposed amendment to the 1972 revision of the Equal Opportunity Act allowing jury trials was defeated.

11. 338 F Supp 914 (S D Tex 1922).

12. *Ochoa*, 338 F Supp at 919. See also, *Lowry v Whitaker Cable Corp.*, 348 F Supp 202 (W D Mo 1972), aff'd, 472 F2d 1210 (8th Cir 1973), stating that in order to sustain a claim for a jury trial, the nature of the claim would have to sustain the right to a jury trial at the time of the adoption of the Seventh Amendment.

13. US Const, Amend VII. For an interesting and informative analysis of the history of the Seventh Amendment and the politics involved in its formation, see Alan Howard Scheiner, *Judicial Assessment of Punitive Damages, the Seventh Amendment, and the Politics of Jury Power*, 91 Colum L Rev 142 (1991).

14. 415 US 189 (1974).

trial by jury extends beyond those common law forms of action accepted and practiced during that time.¹⁵ For instance, in *Pernell v Southall Realty*,¹⁶ the Supreme Court held that the Seventh Amendment requires trial by jury in even those actions that were not known at common law as long as the action involves those rights and remedies that are traditionally involved in an action at law rather than an action at equity or admiralty.¹⁷

The phrase "common law" in the Seventh Amendment, as interpreted by the Supreme Court, is used in "contradistinction" to equity and admiralty and includes not only suits recognized by common law in its earlier and historical proceedings, but also those suits in which legal rights were to be ascertained and determined. Thus, those cases that recognized equitable rights and where equitable remedies were administered were not entitled to trial by jury.¹⁸ The *Curtis* case is recognized for holding that the Seventh Amendment applies to those new causes of action that are created by Congress as long as the statute creates legal rights and remedies that are enforceable in an action for damages in courts of law.¹⁹

In *Shields v Thomas*,²⁰ the Supreme Court declared that the Seventh Amendment does not include the exclusive jurisdiction of an equity court, but rather is restricted to rights and remedies that are legal by nature.²¹ An interesting aspect of this issue is brought to light when there is a joinder of legal and equitable issues.²² In *Dairy Queen, Inc. v Wood*²³ and *Beacon Theatres, Inc. v Westover*,²⁴ it was held that when both legal and equitable claims are presented in a single case, only in the rarest of circumstances can the right to a jury trial of legal issues be lost through prior determination of equitable claims. In sum, if a legal claim is joined with an equitable claim there is a Seventh Amendment right to a jury trial on the legal claim as well as on all the issues common to both the legal and equitable claim. The right to a jury trial cannot be abridged by merely characterizing the legal claim as incidental to

15. *Curtis*, 415 US at 189.

16. 416 US 363 (1974).

17. *Pernell*, 416 US at 375.

18. *Parsons v Bedford*, 28 US 433, 446-47 (1830).

19. *Curtis*, 415 US at 194.

20. 59 US 253 (1856).

21. *Shields*, 59 US at 262.

22. See FRCP 18(a), allowing for the joinder of legal and equitable claims.

23. 369 US 469 (1962).

24. 359 US 500 (1959).

the equitable relief that is sought.²⁵

AN ANALYSIS OF TITLE VII UNDER THE SEVENTH AMENDMENT BACKGROUND

The rules enunciated in the cases above were brought to bear on Title VII actions in *Beesley v Hartford Fire Ins. Co.*²⁶ The district court in *Beesley* held that, under Title VII, "back pay" constitutes a form of compensatory or "legal damages." The court emphasized that the term "court," as used in Section 2000e-5(g) of Title VII, does not preclude the finding that a jury may be contemplated. After all, juries do decide issues in the "context of a courtroom."²⁷ Emphasis was also placed on Justice Marshall's opinion in *Lorillard v Pons*,²⁸ where the Court was asked to determine whether the Age Discrimination in Employment Act (ADEA) requires a trial by jury.²⁹ The *Beesley* court, recognizing that the ADEA portion in contention was similar to the Title VII language at issue, opined that Justice Marshall found the term "court" to embrace a broader meaning than "judge."³⁰

Justice Marshall, in *Lorillard*, found that the ADEA does provide a right to trial by jury.³¹ However, Justice Marshall declared that the Supreme Court was not deciding whether Title VII provided for a jury trial by way of statute or constitutional right.³² Justice Marshall stated that the ADEA provides for "legal relief" in the form of back wages, thereby allowing an "absolute right to a jury trial under the Seventh Amendment."³³ To bolster Justice

25. *Ross v Bernhard*, 396 US 531, 539 (1970).

26. 723 F Supp 635 (N D Ala 1989).

27. *Beesley*, 723 F Supp at 638-39.

28. 434 US 575 (1978).

29. *Beesley*, 723 F Supp at 639.

30. *Id.* The operative language of the ADEA states:

In any action brought to enforce this Act the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section.

29 USC § 626(b) (1985) (emphasis added).

Compare the ADEA language with the operative Title VII language:

[T]he court may . . . order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . or any other equitable relief as the court deems appropriate.

42 USC § 2000e-5(g) (emphasis added).

31. *Beesley*, 723 F Supp at 639.

32. *Lorillard*, 434 US at 583-84.

33. *Id.* at 584.

Marshall's assertions, the *Beesley* court emphasized the "make whole" purpose of Title VII.³⁴ The legislative history of Title VII evidences a "back pay" provision modeled after the National Labor Relations Act.³⁵ From this language, we are to undoubtedly surmise that this includes the use of legal remedies.

The *Beesley* court went on to state that the Eleventh Circuit recently had characterized "back pay" as "compensatory damages" and, as such, these are the type of damages that have included a right to a jury trial under the Seventh Amendment.³⁶ In sum, the court believed that "unless Congress expressly disclaims" in a statute that a right to trial by jury does not exist "for a legitimate reason," a right to trial by jury will be found to exist when appropriate.³⁷

Whether there is a right to a jury trial will thus depend on the nature of the issue to be tried rather than merely the character of the overall action. The court in *Beesley* explained that:

[In order to determine the] "legal" nature of an issue [we must first consider] the premerger custom with reference to such questions; second, the remedy sought; and third the practical abilities and limitations of juries. . . . [T]he primary [emphasis in this analysis is] the type of relief sought.³⁸

Where injunctive relief or backpay is sought, the relief is equitable and, consequently, there is no entitlement to trial by jury. However, where the relief sought is composed of compensatory or punitive damages, then there most certainly is an entitlement to trial by jury.³⁹

RECENT GUIDANCE

The United States Supreme Court has never directly ruled on whether there is a Seventh Amendment right to a jury trial under Title VII. However, many recent cases from the Supreme Court, by analogy, arguably do provide such a right to a jury trial.

In *Chauffeurs, Teamsters and Helpers, Local No. 391 v Terry*,⁴⁰ the issue the Supreme Court decided was "whether an employee who seeks relief in the form of backpay for a union's alleged breach

34. *Beesley*, 723 F Supp at 644.

35. *Id.*

36. *Id.* at 647.

37. *Id.* at 650.

38. *Id.* at 651.

39. *Id.* at 652.

40. 494 US 558 (1990).

of its duty of fair representation has a right to trial by jury."⁴¹ In *Local No. 391*, the McLean Trucking Company and Local 391 were parties to a collective bargaining agreement.⁴² The twenty-seven respondents were all employed by McLean as truck drivers and were members of the bargaining units covered by the collective bargaining agreement. All were members of the union as well.⁴³ As a result of a change in operations that called for reorganization, McLean began to transfer the drivers and subsequently began a cycle of "layoffs and recall."⁴⁴ Respondents claimed that McLean was giving inactive drivers preference over the respondents.⁴⁵ Subsequently, another round of "layoffs and recalls" occurred that put the inactive drivers in an anomalous position of having more seniority rights than the twenty-seven respondents.⁴⁶ Respondents claimed that McLean breached the collective bargaining agreement in violation of Section 301 of the Labor Management Relations Act and that the Union violated its duty of fair representation.⁴⁷ The remedy sought by respondents included a permanent injunction requiring the defendants to reinstate the respondents to the required seniority status and to cease all illegal acts, and also sought compensatory damages for lost wages and health benefits.⁴⁸ The district court held that there was a Seventh Amendment right to a jury trial on the claim for monetary relief. The Fourth Circuit affirmed and the Supreme Court granted certiorari.⁴⁹

After holding that the union had a duty of fair representation to serve the interests of all its members, the Supreme Court next addressed whether there was a constitutional right to a jury trial in this case.⁵⁰ The Court, realizing that the jury is of historical impor-

41. *Local No. 391*, 494 US at 561.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 562.

47. *Id.* Section 301 of the Labor Management Relations Act, 1947, provides for suits by and against labor unions:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Id. at 562 n 1, quoting Section 301(a) of the Labor Management Relations Act, 61 Stat 156 (1947), codified at 29 USC § 185(a) (1982).

48. *Local No. 391*, 494 US at 562-63.

49. *Id.* at 563.

50. *Id.* at 563-64.

tance and significance to American jurisprudence and as such occupies a special place, noted that any curtailment of the right to a jury trial should be "scrutinized with the utmost care."⁵¹ The framework in determining whether a particular action will resolve legal rights involves an examination of the nature of the issues as well as the remedy sought. In sum, the Court noted that the statutory action must be compared to the eighteenth century action brought in the courts of England prior to the merger of law and equity courts. Then, more importantly, the remedy sought must be examined in order to determine whether it is legal or equitable.⁵²

The Court stated that an action for breach of a union's duty of fair representation was unknown in eighteenth century England because collective bargaining was unlawful; thus, the most analogous cause of action must be found to determine whether the duty of fair representation is legal or equitable.⁵³ The Court was convinced by the union's characterization of a fair representation action as being analogous to an action by a trustee for breach of a fiduciary duty.⁵⁴ However, even though trust proceedings of this nature are traditionally equitable, the Supreme Court was not prepared to characterize respondent's claim as wholly equitable.⁵⁵ Continuing with this line of reasoning, the Supreme Court emphasized that the Seventh Amendment question depends on the nature of the particular issue at hand and not simply on the character of the overall action.⁵⁶ Respondents, in order to recover from the union, must demonstrate that McLean violated Section 301 of the Labor Management Relations Act by breaching the collective bargaining agreement and that the union breached its duty of fair representation.⁵⁷

The fair representation issue is "analogous to a claim against a trustee for breach of a fiduciary duty."⁵⁸ However, the Section 301 issue is comparable to a breach of contract claim which is a legal issue.⁵⁹ After determining that respondents' cause of action included both legal and equitable claims, the Court then had to de-

51. *Id.* at 565, quoting *Dimick v. Schiedt*, 293 US 474, 486 (1935).

52. *Local No. 391*, 494 US at 565.

53. *Id.* at 565-66.

54. *Id.* at 567.

55. *Id.* at 569.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 569-70.

termine whether respondents were entitled to a jury trial.⁶⁰ The Court determined that the remedy sought by respondents was a legal one. This was because respondents were seeking backpay which encompasses wages and benefits that would have been received if respondents' claims had been properly handled.⁶¹ The Court noted that it was not faced with the prospect of a monetary award that was "incidental to or intertwined with injunctive relief" and therefore would have been equitable.⁶²

The union then contended that backpay under Title VII has been labeled equitable. This was considered important because the union further believed that Title VII was modeled after the backpay provision of the National Labor Relations Act as to unfair labor practices.⁶³ Therefore, if Title VII remedies have been determined to be equitable, then naturally the National Labor Relations Act, upon which Title VII is based, must also provide for equitable remedies.⁶⁴ The Supreme Court did not accept the union's characterization, emphasizing that the remedy sought in this duty of fair representation case was different from the backpay provisions under Title VII.⁶⁵

Another recent case adjudicated by the Supreme Court that, by analogy, may give credence to the right of a jury trial under Title VII is *Granfinanciera, S.A. v Nordberg*.⁶⁶ The issue presented for consideration in *Granfinanciera* was whether a "person who has not submitted a claim against a bankruptcy estate has a right to a jury trial when sued by the trustee in bankruptcy to recover an allegedly fraudulent money transfer."⁶⁷ The bankruptcy court originally denied the petitioner's request for a jury trial, basing its decision on a suit to recover a fraudulent transfer as being a "core action that originally, under the English common law," was a non-jury issue.⁶⁸ The court of appeals affirmed and reiterated that there was no statutory⁶⁹ right to a jury trial. Also, an action to recover a fraudulent conveyance is equitable in nature, even when

60. Id at 570.

61. Id.

62. Id at 571.

63. Id at 571-72. See also the National Labor Relations Act, 29 USC § 160(c) (1982).

64. *Local No. 391*, 494 US at 572.

65. Id.

66. 492 US 33 (1989).

67. *Granfinanciera*, 492 US at 36.

68. Id at 37.

69. 11 USC § 548(a)(2) (1982 ed, Supp V). This is a constructive fraud provision.

the plaintiff seeks monetary relief.⁷⁰ The court of appeals also held that bankruptcy, by its nature, is also equitable and that Congress may convert a creditor's legal rights into equitable claims which in turn would make the Seventh Amendment right to a jury inoperative.⁷¹ The Supreme Court granted certiorari to determine if a jury trial was warranted.⁷²

Similar to the Court in *Local No. 391*, Justice Brennan in *Granfinanciera* first compared the statutory action to eighteenth century actions brought in English courts prior to the merger of the courts of equity and law. Then, more importantly, Justice Brennan noted that the Court must compare the remedy sought and determine whether it is legal or equitable.⁷³ If the Court then finds that a jury trial is warranted under the Seventh Amendment, then the Court must decide if Congress may assign and has assigned the decision of the claim at bar to a non-Article III adjudicative body that does not use a jury in the fact-finding process.⁷⁴ After analyzing English case law from the eighteenth century, the Court in *Granfinanciera* determined that this action, to recover an alleged fraudulent conveyance "of a determinate sum of money," must be brought at law, as an English Court of Equity in eighteenth century England "would not have adjudicated it."⁷⁵ Although a course of action based on fraudulent conveyance is related to bankruptcy proceedings, a case based on fraudulent conveyance is separate and entitled to a jury trial under the Seventh Amendment.⁷⁶

Congress' power to block the Seventh Amendment right to a jury trial does have limits. Congress may only "deny trials by jury in actions at law" where "public rights" are litigated.⁷⁷ When what can be termed wholly private cases involving tort, contract, or property claims among others are involved, then the government does not have the right to limit the Seventh Amendment right to a jury trial.⁷⁸ The Court in *Granfinanciera* then went on to state that if a statutory cause of action, such as the cause of action for

70. *Granfinanciera*, 492 US at 37.

71. *Id.*

72. *Id.* at 38.

73. *Id.* at 42.

74. *Id.*

75. *Id.* at 46-47.

76. *Id.* at 50.

77. *Id.* at 51. "Public rights" refers to cases where "the Government is involved in its sovereign capacity under an otherwise valid statute creating enforceable public rights." *Id.*

78. *Id.* at 51-52.

recovery of a fraudulent conveyance under 11 USC § 548(a)(2) does not involve a "public right" for the purposes of Article III of the Constitution, then Congress cannot assign the adjudication of the claim to a specialized non-Article III court lacking "the essential attributes of the judicial power."⁷⁹ If the cause of action must be adjudicated in an Article III court, then the Seventh Amendment protects the right to a jury trial where the cause of action is grounded in law.⁸⁰ The Supreme Court then went on to characterize a bankruptcy trustee's right to recover a fraudulent conveyance under 11 USC § 548(e)(2) as a "private right" as opposed to a "public right."⁸¹ Most importantly, the Court then opined that permitting jury trials in fraudulent conveyance actions brought by a trustee would not dismantle the statutory scheme enacted by Congress.⁸² The grant of jury trials may impede the speed at which bankruptcy proceedings are completed and may even add to the cost of Chapter 11 reorganizations, but these are not sufficient grounds to gut the command of the Seventh Amendment.⁸³ A law may be "efficient, convenient, and useful in facilitating the functions of Government," but this alone will not save a law that is contrary to the Constitution.⁸⁴

Another recent case from the Supreme Court, *Lytle v Household Mfg Inc.*,⁸⁵ also lends itself to the proposition that the Supreme Court may be prepared to allow trial by jury in Title VII claims.⁸⁶ Justice Marshall, speaking for the Court, stated that "petitioner brought both equitable and legal claims in the same action, but the district court erroneously dismissed the legal claims."⁸⁷ Justice Marshall stated that the issue to be decided was "whether the District Court's resolution of the issues raised by petitioner's equitable claims bars relitigation of the same issues before a jury in the context of his legal claims."⁸⁸

Lytle, an African-American, was discharged from his job because he accrued more than eight hours of unexcused absences within a

79. Id at 53.

80. Id.

81. Id at 55.

82. Id at 61.

83. Id at 63.

84. Id.

85. 494 US 545, 110 S Ct 1331 (1990).

86. *Lytle*, 110 S Ct at 1333.

87. Id at 1334.

88. Id.

twelve-month period.⁸⁹ Lytle, after receiving a right to sue letter from the EEOC, instituted suit seeking both monetary and injunctive relief under Title VII of the Civil Rights Act of 1964 and 42 USC § 1981.⁹⁰ Lytle claimed the discharge was based on race and because he took his complaint to the EEOC.⁹¹ Lytle requested a jury trial "on all issues triable by a jury."⁹²

At the beginning of the trial, Lytle's Section 1981 civil rights claim was dismissed by the district court. The court stated that Title VII provided the sole remedy for Lytle.⁹³ After a bench trial on the Title VII issue in which Lytle presented his case-in-chief, the court entertained and granted defendant's motion to dismiss.⁹⁴ The court of appeals affirmed but stated that the district court's dismissal of the Section 1981 claim was "apparently erroneous" because "Title VII and section 1981 [are] separate, independent and distinct."⁹⁵ However, the appellate court found that the district court's findings with respect to the Title VII claims collaterally estopped Lytle from proceeding with his Section 1981 claim because the elements of a cause of action under Section 1981 "are identical" to the elements of a Title VII action.⁹⁶ In sum, the district court ignored Lytle's claim that the Seventh Amendment prevented a collateral estoppel effect of the district court's ruling and believed that judicial economy of resources is overriding.⁹⁷ The Supreme Court reversed.⁹⁸

The Supreme Court in *Lytle* emphasized that, had it not been dismissed, Lytle's Section 1981 claim would have been granted a jury trial.⁹⁹ When legal and equitable claims are joined in the same action, "the right to jury trial on the legal claim, including all issues common to both claims, remains intact."¹⁰⁰ Therefore, if the Section 1981 claim had remained in the suit, Lytle would have been entitled to a jury trial and the jury would have had to resolve the Section 1981 claims before the court considered the Title VII

89. *Id.* The Court noted that there was a dispute as to whether Lytle had informed his supervisor that he would be absent. *Id.*

90. *Id.*

91. *Id.* at 1334-35.

92. *Id.* at 1335.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* (citation omitted).

claims.¹⁰¹ This is so because only rarely can one lose his right to a jury trial through the prior determination of equitable claims.¹⁰² The purposes of collateral estoppel are not advanced in a case of this nature where an individual's right to a jury trial is lost merely because of the erroneous ruling by the trial court.¹⁰³ Collateral estoppel protects parties from multiple lawsuits as well as judicial resources.¹⁰⁴ The Court noted, however, that this case did not present the problem of multiple lawsuits; rather, it was a single suit in which the plaintiff correctly joined his legal and equitable claims.¹⁰⁵ Relitigation of this case was the only way to correct the error of the district court.¹⁰⁶

The *Lytle* case demonstrates the Court's tenacity in guaranteeing that litigants receive the proper entitlement of a jury when it is warranted. Justice Marshall is resolute when he states that judicial economy of resources and problems of collateral estoppel will rarely influence the court not to guarantee the litigants trial by jury under the Seventh Amendment when it is clearly warranted.¹⁰⁷ Cognizance of the jury's importance is manifested when Justice Marshall opined that, "had his section 1981 claims not been dismissed, the jury's determination of legal and factual issues could not have been disregarded when the District Court considered [Lytle's] equitable claims."¹⁰⁸ Quite illustrative of the Court's changing views is its comment that "this court has not ruled on the question whether a plaintiff seeking relief under Title VII has a right to a jury trial."¹⁰⁹ Such a remark by the Court may intimate that Title VII, though perceived to be a statute with solely equitable remedies and thus a non-jury statute, may in reality require a right to a jury trial under the Seventh Amendment.

Another recent case, *Vicinanzo v Brunschwig & Fils, Inc.*,¹¹⁰ involving the Employee Retirement Income Security Act (ERISA) and in particular Section 510 of the Act, is relevant to the argument for Title VII jury entitlement.¹¹¹ Defendant sought to strike

101. *Id.*

102. *Id.*

103. *Id.* at 1337.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 1335.

108. *Id.* at 1338 n 4.

109. *Id.* at 1335 n 1.

110. 739 F Supp 882 (S D NY 1990).

111. *Vicinanzo*, 739 F Supp at 882.

plaintiff's demand for a jury trial under Section 510 of ERISA,¹¹² claiming that there is no statutory right to a jury trial and that, as an equitable provision, the Seventh Amendment does not apply.¹¹³ Plaintiff countered with Section 502 of ERISA,¹¹⁴ claiming that Section 510 is "enforceable under the private right of action provided under Section 502," and since "actions brought under Section 502 often present legal, as opposed to equitable, claims," there is a right to trial by jury.¹¹⁵ The district court held that plaintiff was entitled to a jury trial under the Seventh Amendment as well as by statutory implication.¹¹⁶ The district court then stated that "because the right to a jury trial on claims of legal entitlement is so obvious, ERISA makes no *express* provision for jury trials even on fact-oriented issues arising in purely contractual cases."¹¹⁷

In *Paladino v Taxicab Industry Pension Fund*,¹¹⁸ an implied statutory right to trial by jury was found.¹¹⁹ In *Paladino*, the district court stated:

To find that there is no Seventh Amendment right to a jury trial does not answer the entire question. Even where there is no constitutional right to a jury trial, a court must examine the statute which created the new right of action, in this case ERISA, to ascertain whether Congress impliedly provided a right to a jury trial. The Seventh Amendment does not prevent Congress from providing a right to a jury trial where a newly contrived statutory remedy is made available to litigants.¹²⁰

On balance, in *Paladino*, the district court found that the intent of Congress was to regard ERISA plan enforcement actions as legal in nature.¹²¹

When ascertaining the constitutional right to a jury trial, the focus must be on the nature of the claims and whether the relief sought is equitable or legal.¹²² However, when the court is asked to determine the scope of an implied statutory right to a jury trial, "it is essential to consider interests broader than those protected by the constitution—including whether 'the crux of the case [is] a fac-

112. 29 USC § 1140 (1974).

113. *Vicinanzo*, 739 F Supp at 882-83.

114. 29 USC § 1132 (1987).

115. *Vicinanzo*, 739 F Supp at 883.

116. *Id.*

117. *Id.* at 885 (emphasis in original).

118. 588 F Supp 37 (S D NY 1984).

119. *Vicinanzo*, 739 F Supp at 885.

120. *Id.*, quoting *Paladino*, 588 F Supp at 39.

121. *Vicinanzo*, 739 F Supp at 885.

122. *Id.*

tual determination' of that sort traditionally made [by] common law juries."¹²³

As to a constitutional right to trial by jury under the Seventh Amendment, the Supreme Court has recognized that the Seventh Amendment does apply to actions enforcing "statutory rights" and therefore would require a jury trial on demand as long as legal rights and remedies are implicated in an action in a court of law.¹²⁴ The relevant inquiry when one determines whether there is a right to a jury trial is whether the claim involves those rights and remedies that "traditionally" were enforced at an action at law.¹²⁵ The issue is not whether the rights and remedies have been "recast in statutory garb" to such an effect that they are no longer characterized as legal rights or remedies and may in fact be equitable.¹²⁶ The court in *Vicinanzo* then proceeded to discuss recent litigation including the *Local No. 391* case.¹²⁷ *Local No. 391* essentially is grounded in the Supreme Court's belief that "great analytical weight" should be placed on the issues to be proved at trial in order to determine if there is a right to a jury trial.¹²⁸ The *Vicinanzo* court then switched to the *Granfinanciera* case, and began a discussion of the Court's holding and rationale.¹²⁹ *Granfinanciera*, in short, stands for the proposition that as long as a legal cause of action does not involve "public rights," Congress cannot deprive those parties of the Seventh Amendment right to trial by jury.¹³⁰

CONCLUSION

How are the courts to react to these recent Supreme Court decisions that arguably create the right of jury trial in Title VII cases on the grounds that the remedy sought is legal? Courts should be wary about denying jury trials merely because of "supposed functional or practical considerations."¹³¹ "Taken together, the Supreme Court's recent cases (*Lytle*, *Granfinanciera* and *Local No. 391*) suggest that statutory causes of action giving rise to individual claims for money damages are rarely, if ever, beyond the reach

123. *Id.*

124. *Id.* at 887.

125. *Id.* (citation omitted).

126. *Id.*

127. *Id.*

128. *Id.* at 888.

129. *Id.* at 888-89.

130. *Id.* at 889.

131. *Id.*

of the Seventh Amendment.”¹³² In sum, Title VII and ERISA are not wholly equitable statutes nor would the use of jury trials harm or frustrate the purposes of the statutes.¹³³

Recently, Congress has enacted into law the Civil Rights Act of 1991.¹³⁴ In particular, Section 794a(b)(2) dictates that “compensatory damages” will not include, among other things, “backpay.” Then, Section 794a(c) declares that if a complaining party seeks “compensatory” or “punitive” damages, then any party may demand a jury trial.¹³⁵ Arguably, Congress has now spoken as to whether “backpay” is an equitable remedy. However, as we have learned from the Supreme Court, recharacterization of a cause of action or damages will not be tolerated when it flies in the face of the true characteristics of the action or remedy. In sum, the Court is more concerned with form over substance. Congress has blinked; we now have “compensatory” and “punitive” damages with the right to a jury trial. The issue at hand is whether Congress has gone far enough to satisfy what some believe to be a Seventh Amendment constitutional mandate to a jury trial for actions that are legal in nature. Obviously, Congress has realized that business entities must be held culpable for their outrageous conduct and thus punitive damages are appropriate. Congress is correct to bring business entities into line with others that have long been subject to punitive damages when their conduct warrants such an award.

One may, however, wonder how the law of Title VII can operate properly if given to a jury. After all, it is generally accepted that Congress feared placing just those types of cases into the hands of a jury that was often prejudiced. The court was the preferred and designated arbiter as only a judge could rise above underlying community prejudice and guarantee an impartial trial. One may argue that the new provisions providing for a jury trial are only worthwhile in some cases while inappropriate in others. The types of cases where a jury could be used is with an issue that cuts across race and sex lines. An example of this would be cases involving age discrimination. A jury can sympathize with these litigants because everybody ages; however, when only a race issue is present, the use of a jury trial should be discouraged as often the jury will not identify with the plaintiff. One only has to read current newspapers in

132. *Id.* at 890.

133. *Id.*

134. Civil Rights Act of 1991. May be retrieved on Lexis Data Base: 1991 S 1745 November 13, 1991—Version 4 as enrolled.

135. Civil Rights Act of 1991, Sections 794(b)(2) and 794 (a)(c).

order to realize that overt racism and prejudice as to the use of public facilities (for example, restaurants) is still a devastating problem. Title VII, as recently amended, will allow the plaintiff the use of a well-stocked arsenal, with several options, to pursue his or her case.

We still need to be concerned, however, with fairness. For example, an issue that has arisen in Pennsylvania concerning Title VII actions deals with whether, through the pendent jurisdiction of a federal district court, a party to a suit based on Title VII and the Pennsylvania Human Relations Act may obtain a trial by jury in the federal district court under the Seventh Amendment when the Pennsylvania Act may not provide for a trial by jury in state courts, even though the relief sought may be characterized as "legal." Whether the answer to this issue is in the affirmative or not involves issues which are not within the scope of this comment. However, we should be aware of the fact that some courts are answering "yes" to this question despite the guidance of the Superior Court of Pennsylvania. Thus, Title VII, through pendent jurisdiction, can create another strategy for those with state claims: For Sale—Jury Trials on State Issues—No right to a jury trial in your state needed!!! Perhaps we need to be leery of judicial economy and the loopholes it may create for some plaintiffs. It all comes down to the basic principle that those who are similarly situated should be treated the same, regardless of the forum in which they choose to have their rights adjudicated.

Michael A. Labriola
Lisa C. Scolieri