

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JENNIFER TOMMEY,

Plaintiff,

v.

No. 11-2457-SAC

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY,

Defendant.

MEMORANDUM AND ORDER

This case comes before the Court on defendant's motion to strike plaintiff's demand for a jury trial. Defendant has filed no opposition. Plaintiff's complaint is brought solely pursuant to § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, (ERISA), 20 U.S.C. § 1132(a)(1)(B).

The Tenth Circuit has held that the right to a jury trial is not available in actions brought pursuant to § 502(a)(1)(B) of ERISA because such actions are inherently equitable in nature. *See Graham v. Hartford Life & Accident Ins. Co.*, 589 F.3d 1345, 1355 (10th Cir. 2009) (concluding that the Seventh Amendment guarantees no right to a jury trial in a § 1132(a)(1)(B) action for benefits), *cert. denied*, ___U.S. ___, 130 S.Ct. 3356 (2010), and cases cited therein. Accordingly, given the equitable nature of plaintiff's claim for benefits, she has no right to a jury trial on her § 1132(a)(1)(B) claim. That

plaintiff seeks money damages does not alter this conclusion. *See Graham*, 589 F.3d at 1357, *citing Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255-56 (1993).

IT IS THEREFORE ORDERED that defendant's motion to strike plaintiff's demand for a jury trial (Doc. 4) is granted.

Dated this 14th day of September, 2011.

s/ Sam A. Crow
Sam A. Crow, U.S. District Senior Judge