IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN J. DENNISON, on behalf of himself and
all others similarly situated,

ORDER

Plaintiff,

10-cv-338-bbc

v.

MONY LIFE RETIREMENT INCOME SECURITY
PLAN FOR EMPLOYEES, EXCESS BENEFIT
PLAN FOR MONY EMPLOYEES, MONY LIFE
INSURANCE COMPANY and the ADMINISTRATORS
of such plans,

Defendants.

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In this proposed class action brought under the Employment Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, plaintiff John Dennison contends that defendants MONY Life Retirement Income Security Plan for Employees, Excess Benefit Plan for MONY Employees, MONY Life Insurance Company and the respective administrators of each of the plans violated ERISA by retroactively modifying the discount rate used to calculate lump sum payouts of plaintiff's lifetime annuity benefits, thereby reducing his benefits under the plans. On December 17, 2010, I granted defendants' motion to dismiss

plaintiff's claim that his benefits under the Excess Benefit Plan were calculated incorrectly in violation of ERISA or New York law. However, I denied defendants' motion to dismiss plaintiff's claim that defendants violated ERISA by applying the incorrect discount rate to calculate his lump sum benefit under the Income Security Plan.

Now before the court is defendants' motion for reconsideration of the December 17 order, or in the alternative, a motion to remand to the Plan's Benefits Appeals Committee for further consideration, dkt. #40. I will deny the motion.

DISCUSSION

In the December 17 order, I concluded that plaintiff's amended complaint and the incorporated documents are sufficient to state a claim that the administrator's decision to use a discount rate to calculate his benefits was unreasonable because, construing plaintiff's allegations in his favor, I could infer that the decision was based on errors of law and fact. First, the Income Security Plan administrator stated in his decision that the Internal Revenue Code § 417(e) *required* the use of the segment rate in converting an annuity to a lump sum; in fact the code sets the segment rate as the *maximum* rate, while allowing lower rates to be used. Also, the administrator did not consider whether application of the segment rate violated the anti-cutback provision of the Income Security Plan. Second, in reviewing the administrator's decision, the Benefits Appeals Committee concluded that plaintiff's lump

sum payment should be calculated using the rate in place when the payment was disbursed. However, it affirmed the administrator's decision to calculate the payment using the segment rate, which was not in place when plaintiff's payment was disbursed. Also, like the administrator, the committee failed to consider other important factors such as whether the amendment and the administrator's decision violated the anti-cutback provision or rendered it superfluous and illusory as in Call v. Ameritech Management Pension Plan, 475 F.3d 816 (7th Cir. 2007).

Defendants contend that regardless of these defects, plaintiff's claim should be dismissed. None of their arguments are persuasive. The question presented by defendants' motion to dismiss was whether plaintiff's complaint "provide[s] the grounds of his entitlement to relief" by alleging "enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see also Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Because this is an ERISA case, I considered whether plaintiff's allegations allow a plausible inference that the administrator's and committees' decision to apply the segment rate to calculate plaintiff's benefits under the Income Security Plan was arbitrary and capricious or contrary to an unambiguous provision in the plan. In deciding the motion to dismiss, I accepted all of plaintiff's well-pleaded allegations as true and drew all reasonable inferences in his favor. Disability Rights Wisconsin, Inc. v. Walworth County Bd. of Supervisors, 522 F.3d 796, 799 (7th Cir. 2008). Plaintiff's allegations and the

incorporated plan documents satisfy this standard easily.

Defendants do not deny that the administrator's reading of IRC § 417(e) was in error. Rather, they argue that because the administrator's decision was reviewed by the committee, the reasoning she applied in her decision was ultimately irrelevant to the final determination. However, it is not clear whether the committee relied on the administrator's interpretation of the § 417(e) in upholding her decision. The committee stated, "[A]s previously explained to [plaintiff] in the initial claim denial letter, his lump sum payment was calculated . . . by using the 'segmented rate' method described in the Internal Revenue Code section 417(e)." Drawing all inferences in plaintiff's favor, I could infer that the committee adopted the administrator's error of law in making its final determination.

Also, defendants do not deny that the Benefits Appeals Committee did not consider whether the segment rate was the interest rate identified in the Income Security Plan at the time plaintiff received his benefit payment. Defendants contend that the committee did not consider this issue because plaintiff never challenged the retroactive nature of the segment rate. Further, such a challenge would have been meritless because the Plan administrator had met all of the requirements under the Plan, the Internal Revenue Code and ERISA to apply the segment rate retroactively, including operating the plan "as if [the amendment] were in effect" from January 1, 2008 to July 2009, the date of the amendment. 26 U.S.C. § 1400Q(d)(2)(B).

However, plaintiff did not challenge the retroactive nature of the segment rate when he filed his initial claim for benefits because the Plan amendment making the segment rate retroactive did not exist when he filed his initial claim. In addition, although it may be that the Plan administrator was permitted under the Plan, the Internal Revenue Code and ERISA, to apply the segment rate retroactively, I cannot make such a determination on the record before the court. The record before the court shows only, or at least permits an inference, that the committee provided an explanation for application of the segment rate that is factually incorrect. Thus, from the plaintiff's allegations and the documents in the record thus far, I cannot conclude that the administrator and committee calculated plaintiff's benefits reasonably. Therefore, I will not dismiss plaintiff's claim at this stage.

Finally, I will not remand that case to the Plan's Benefits Appeals Committee for further consideration. Defendants do not explain what additional information the committee would consider and it seems likely that defendants want the case remanded so that the Benefits Appeals Committee can provide a different explanation for its decision. This would not be a sufficient reason to remand the case because defendants will have the opportunity to provide a non-arbitrary rationale for the committee's decision in the context of this lawsuit. At this stage, I have determined only that plaintiff states a plausible claim for relief. I have not concluded that the committee's decision was arbitrary and capricious or unreasonable. Thus, it would be premature to remand the case.

ORDER

IT IS ORDERED that the motion for reconsideration filed by defendants MONY Life Retirement Income Security Plan for Employees, Excess Benefit Plan for MONY Employees, MONY Life Insurance Company and the respective administrators of each of the plans, dkt. #40, is DENIED.

Entered this 14th day of February, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge