

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,

Plaintiff,

ORDER

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 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. However, 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, concluding that the Excess Plan administrator's interpretation was entitled to deference and was reasonable.

Now before the court is plaintiff's motion for reconsideration of the December 17 order dismissing his claim for benefits under the Excess Benefit Plan, dkt. #60. Because plaintiff's motion consists solely of arguments that could have been, but were not raised earlier, or arguments that I rejected previously, I will deny the motion. Ahmed v. Ashcroft, 388 F.3d 247, 249 (7th Cir. 2004) (“Reconsideration is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion.”) (citation omitted).

## DISCUSSION

Plaintiff raises four main arguments in support of his motion for reconsideration. First, he contends that the Income Security Plan unambiguously requires that the administrator use the PBGC rate, rather than the 7.5% rate that was used, to calculate lump sums under the Excess Plan. Citing the Income Security Plan provision that “[f]or purposes of determining the lump sum value of a retirement benefit, the PBGC [rate] is used,”

plaintiff contends that a “lump sum payout under the Excess Plan is certainly every bit as much a ‘retirement benefit’ as is a lump sum payout under the [Income Benefit] Plan,” and thus “the ‘lump sum value’ of [plaintiff’s] ‘retirement benefit’ under the Excess Plan should have been calculated using the PBGC rate.” Plt.’s Br., dkt. #61, at 5.

This argument is identical to the argument plaintiff made in opposition to defendants’ motion to dismiss, Plt.’s Opp. Br., dkt. #32, at 45, and I remain unpersuaded by it. (Plaintiff does assert a few new facts in support of the argument, including language from later versions of the Income Security Plan and an affidavit of an actuary who opines that the administrator’s interpretation of the plans was unreasonable, dkt. #66. However, I will not consider the additional evidence because it was not in plaintiff’s complaint and were not otherwise presented to the court when I was considering defendants’ motion to dismiss.)

As I explained previously, “the Excess Plan does not contain its own formula for calculating lump sum payouts,” but instead “incorporates terms from the Income Security Plan.” Dkt. #39, at 17. The Income Security Plan includes at least two interest rates that may be used for calculating actuarial equivalence of a lump sum payment: (1) the PBGC [Pension Benefit Guaranty Corporation] rate, which was to be used to calculate lump sum payments under the Interest Security Plan; and (2) a rate of 7.5%, which applied “[f]or other purposes.” 1994 Income Security Plan, dkt. #27-1, § 1.36.

The language in the plans is ambiguous because neither plan explains explicitly what

rate should be used to calculate lump sum payments under the Excess Plan. In the face of this ambiguous language, the administrator's interpretation is not arbitrary and capricious and is entitled to deference. As defendants point out, the administrator's interpretation is likely grounded on the premise that the PBGC rate was intended to apply to calculations subject to Internal Revenue Code § 417(e) (which mandated a rate no higher than the PBGC rate), like the lump sum calculations under the Income Security Plan. Unlike lump sums under the Interest Security Plan, lump sum calculations under the Excess Plan are not subject to § 417(e), and thus, a different interest rate can be applied.

Plaintiff's second argument is that it is unreasonable to use different interest rates to calculate lump sum benefits under the Interest Security Plan, on the one hand, and Excess Plan lump sum benefits, on the other. Specifically, plaintiff contends that if "a plan administrator uses two different interest rates to calculate the value of two identical streams of income, the plan administrator gets two different 'equivalent' values, an 'absurd' result by any definition." Plt.'s Br., dkt. #61, at 13-14. By waiting to raise this argument for the first time in his motion for reconsideration, plaintiff has waived it. Brooks v. City of Chicago, 564 F.3d 830, 833 (7th Cir. 2009) ("[A]ny arguments . . . raised for the first time in [a] motion to reconsider are waived."). Moreover, it is not absurd for the administrator to use two different interest rates to calculate lump sums under two different plans where one plan is a tax-qualified plan with limited interest rates and the other is not. By imposing interest

rate limitations on only certain types of plans, the IRC § 417 implicitly allows the use of rates above the limit for other plans.

Plaintiff's third argument is that even if the administrator was correct in applying the "other purposes" rate, the Interest Security Plan was amended in 2002 to include a 7% "other purposes" rate. Thus, the administrator should have used a 7% rate rather than a 7.5% rate. Plaintiff did not raise this argument until he filed his motion for reconsideration and he withdrew it in his reply brief, so I will not consider it further. Plt.'s Reply Br., dkt. #73, at 1-2.

Finally, plaintiff contends that the court erred by not considering whether the Excess Plan administrator had a conflict of interest. Plaintiff contends that the administrator was not entitled to deference because it was operating under a "severe" conflict of interest in mid-2009 when it decided plaintiff's claims under both the Interest Security Plan and the Excess Plan. The "severe conflict" arose, plaintiff alleges, because in 2009 and 2010, defendants had to fund the trust that pays the Income Security Plan benefits, but not the Excess Plan benefits. Plaintiff has submitted the affidavit of an actuary describing the alleged conflict of interest in detail.

Again, plaintiff raises this argument and the facts supporting it for the first time in his motion for reconsideration and gives no reason why he failed to raise it earlier. As already explained, plaintiff cannot argue matters on reconsideration that he could have

argued previously. The question presented to the court by defendants' motion to dismiss was whether plaintiff had stated a claim that the plan administrator interpreted the Excess Plan unreasonable or incorrectly. Plaintiff's amended complaint fails to state such a claim. Therefore, his motion for reconsideration is denied.

ORDER

IT IS ORDERED that Plaintiff John Dennison's motion for reconsideration, dkt. #60, is DENIED.

Entered this 26th day of April, 2011.

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