IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

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

Plaintiff,

v.

MONY LIFE RETIREMENT INCOME SECURITY PLAN FOR EMPLOYEES, MONY LIFE INSURANCE COMPANY and the ADMINISTRATOR of such plan,[1]

Defendants.

OPINION and ORDER

10-cv-338-bbc

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

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, MONY Life Insurance Company and the administrator of the plan violated ERISA by retroactively

---

[1] On December 17, 2010, I dismissed plaintiff's claim that his benefits under the Excess Benefit Plan were calculated incorrectly in violation of ERISA and New York law. Therefore, I have amended the caption to remove the Excess Benefit Plan and its administrator as defendants.

modifying the discount rate used to calculate lump sum payouts of plaintiff's lifetime annuity benefits, thereby reducing his benefits under the plans. Now before the court is plaintiff's motion for class certification under Fed. R. Civ. P. 23. Dkt. #87.

I will grant the motion. Despite defendants' objections, I conclude that plaintiff has satisfied the requirements of Rule 23(a). In addition, I conclude that the class action is maintainable under Rule 23(b)(1) or (b)(2). However, the scope of the class that I will certify is slightly narrower than that proposed by plaintiff because plaintiff cannot adequately represent plan participants whose claims are subject to a statute of limitations defense. Finally, because neither side addresses the question whether class members should receive notice in this case, the parties will be asked to present their positions on that matter to the court.

I find the following facts to be undisputed for the purpose of deciding plaintiff's motion for class certification.

## FACTS

### A. The Parties and Plan Details

Plaintiff John Dennison was an employee of defendant MONY Life Insurance Company until August 5, 1996. At the time his employment with MONY terminated, he was a participant in the MONY Life Retirement Income Security Plan for Employees. (I will refer to this plan as the Income Security Plan.)

The Income Security Plan is a defined benefit pension plan and trust sponsored and maintained by defendant MONY Life Insurance Co. for its eligible employees. It is administered by an Administrative Committee appointed by an officer of MONY. The Income Security Plan in effect when plaintiff retired in 1996 was the plan effective as of January 1, 1994. 1994 Income Security Plan, dkt. #27-1. The plan provides that the Administrative Committee "shall have full discretion in interpreting the Plan and deciding all questions of fact within the scope of its authority." Id., § 10.11. The third paragraph of the plan's preamble, titled "Purpose," provides that

> The rights of any person who terminated employment or who retired on or before the effective date of a particular amendment, including his or her eligibility for benefits and the time and form in which benefits, if any, will be paid, shall be determined solely under the terms of the Plan as in effect on the date of his or her termination of employment or retirement, unless such person is thereafter reemployed and again becomes a Participant or unless otherwise made applicable for former Employees.

Id., Purpose, at 2.

Under the 1994 Income Security Plan, plaintiff was entitled to receive an age-adjusted "Accrued Benefit" when he reached age 55, the plan's "Early Retirement Age." Id., §§ 1.27, 6.1, 9.1. A participant may elect distribution of his accrued benefit in one of eight different "optional forms," id. § 9.2, one of which is "an immediate or deferred lump sum payment" that is actuarially equivalent to a straight life annuity, id. § 9.2(5), and comprises "the annuitized value of [the] Employer Contribution Account and the 'Defined Benefit." Id., § 1.2. The 1994 Income Security Plan in effect as of August 5, 1996 specified that the discount rate to be applied to determine present value was to be "the PBGC [Pension Benefit Guaranty Corporation] immediate annuity rate as of 120 days prior to the Benefit Commencement Date." Id., § 1.36.

The 1994 Income Security Plan contains an "anti-cutback" provision prohibiting plan amendments that would "reduce the Accrued Benefit of any Participant" or "eliminate an optional form of benefit, except as permitted by Code Section 411(d)(6), or other applicable law." Id., § 13.1.1(b), (c). The 1994 plan defines "Accrued Benefit" as "the value of a Participant's Retirement Benefit expressed as a Straight Life Annuity determined according to the terms of the Plan, comprised of the annuitized value of Employer Contribution Account and Defined Benefit." Id., § 1.2. In turn, "Retirement Benefit" is defined as "a benefit payable on the dates, in the forms, and in the amounts specified in Section 9, whichever is applicable." Id., § 1.64.

B. Plaintiff's Claims for Benefits

Plaintiff became eligible for distribution under the Income Security Plan in 2009, when he reached age 55. By letter dated April 28, 2009, plaintiff (through counsel) requested payment of his retirement benefits under the plan in the form of a lump sum payment. Dkt. #27-6. The letter requested that the lump sum amount be calculated using the PBGC rate under the 1994 Income Security Plan that was in effect at the time of plaintiff's termination. Id.

In June 2009, plaintiff received a check for $325,054.28 representing the administrator's calculation of plaintiff's accrued benefit under the Income Security Plan as a lump sum distribution. The amount was not calculated using the PBGC rate formula stated in the 1994 Income Security Plan. Instead, the administrator utilized a discount rate that was higher than the PBGC rate.

On June 5, 2009, plaintiff's counsel sent a letter to the Income Security Plan administrator, contending that the lump sum amount of plaintiff's distribution was too low because it was calculated using an interest rate higher than the current PBGC rate applicable under the 1994 Income Security Plan. Dkt. #27-7. Counsel advised the administrator that plaintiff would deposit the checks, while reserving his rights to seek the additional amount to which he claimed entitlement. Id.

On or about July 16, 2009, defendant MONY amended the Income Security Plan to provide that "[e]ffective January 1, 2008, the applicable interest rate shall be the interest rate prescribed by the Secretary of Treasury under Code Section 417(e)." Dkt. #27-4. Under this amendment, a "segmented rate" determined by the Secretary of the Treasury under the Internal Revenue Code § 417(e)(3)(C) would be used to calculate lump sum distributions under the Income Security Plan. The 2009 amendment was made applicable to the calculation of lump sum benefits "payable to Participants who commence payments after December 31, 1999." Id., § 1.

On July 22, 2009, Jean Grevelding, the assistant vice president of AXA Euitable corporate benefits, wrote to plaintiff's counsel on behalf of the plan administrator of the Income Security Plan, denying plaintiff's claim for an additional lump sum amount. Dkt. #27-8. Grevelding rejected plaintiff's argument that the PBGC rate applicable under the 1994 Income Security Plan applied to the calculation of his lump sum payment, stating that the lump sum benefit was calculated properly using the IRC § 417(e) "segment rate" made applicable to participants by the July 16 amendment. Grevelding stated that § 417(e) required the plan to use the segmented rate to calculate lump sum payments. Also, Grevelding stated that the application of the segment rate did not violate ERISA or the plan by reducing plaintiff's accrued benefit. According to Grevelding, the plan defines "Accrued Benefit" "as a Straight Life Annuity," and plaintiff's "benefit calculated as a Straight Life Annuity has remained constant and has not been affected by amendments to the Plan."

Plaintiff appealed the administrator's determinations regarding the Income Security Plan to the plan's Benefits Appeals Committee. Dkt. #27-9. He reiterated his contention that the current PBGC rate applied to conversion of his accrued benefit to a lump sum form and that the amendments to the plan made after his termination requiring use of a different conversion rate could not be applied to him under the Income Security Plan's terms. In letters dated November 3, 2009, the Benefit Appeals Committee denied plaintiff's claims. Dkt. #27-10. The committee stated that plaintiff's accrued benefit, defined in the Income Security Plan as a straight life annuity, had not been reduced by any plan amendment. Id. at 6. The committee also quoted the Treasury Regulation 1.417(e)-1(d)(10)(v), which states that "a participant's accrued benefit is not considered to be reduced in violation of [IRC §] 411(d)(6) merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan" so long as a lawful interest rate is adopted. Id. In addition, the committee stated that the plan's preamble did not provide plaintiff protection from the amendment because it contained an express exception for plan amendments "otherwise made applicable to former employees." Id. The exception was satisfied, the committee concluded, because the plan amendment changing the relevant interest rate was made applicable "to Participants who commence payments after December 31, 1999." The committee concluded that "the interest rate prescribed by the Income Security Plan document at the time of the benefit payment is the correct interest rate." Id.

## OPINION

Plaintiff's proposed class consists of:

> All participants in the MONY Life Retirement Income Security Plan for Employees who received a lump-sum distribution under the Plan, but whose lump sum payments were not calculated using the discount rate or rates in effect at the time of their termination of employment, as well as all participants who are entitled to receive but have not yet received such lump-sum distributions. The Class includes the surviving spouses or beneficiaries of any deceased Class members.

Am. Cpt., dkt. #81, ¶ 12; Plt.'s Br., dkt. #88, at 1-2.

Before the court may certify a class, plaintiff must satisfy the requirements of both Rule 23(a) and (b). Rosario v. Livaditis, 963 F.2d 1013, 1017 (7th Cir. 1992). First, plaintiff must show that he may be allowed to sue as a representative party on behalf of others by meeting the four prerequisites laid out in Rule 23(a): (1) numerosity, that "the class is so numerous that joinder of all members is impracticable"; (2) commonality, that "there are questions of law or fact common to the class"; (3) typicality, that "the claims or defenses of the representative parties are typical of the claims or defenses of the class"; and (4) adequacy, that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Next, plaintiff must show that the proposed class action "may be maintained" as one of the four types of class actions permitted under Rule 23(b). Fed. R. Civ. P. 23(b).

This court makes an initial assessment whether proposed class representatives have standing and whether the proposed class is "precise, objective and presently ascertainable," an implicit requirement in determining whether a class may be certified. E.g., Ruppert v.

Alliant Energy Cash Balance Pension Plan, 255 F.R.D. 628, 633 (W.D. Wis. 2009); Blihovde v. St. Croix County, 219 F.R.D. 607, 616 (W.D. Wis. 2003). In this case neither the proposed class representative's standing nor the ascertainability of the proposed class is in dispute and neither appears to be a problem.

A. Numerosity and Commonality

There is little doubt that plaintiff satisfies the numerosity and commonality requirements of Rule 23(a). To support his showing of numerosity, plaintiff submits evidence that the proposed class has at least 1500 members. Defendant does not dispute these numbers. I am satisfied that the class is sufficiently numerous to make joinder impracticable.

As for commonality, plaintiff must demonstrate "that the class members 'have suffered the same injury.'" Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541, 2551 (2011). Additionally, the common contention "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Id.

In this case, the central issue is common to all members of the proposed class: whether defendants' method for determining lump sum payments under the plan was improper, and in particular, whether the administrator violated the plan by applying "amended" interest rates retroactively instead of using the rate or rates in effect when the participant terminated employment. This issue is amenable to classwide resolution and is sufficient to establish commonality. Ruppert, 255 F.R.D. at 633 (holding that plaintiffs had satisfied commonality requirement where central issue was "whether defendant's method for determining the value of [class members'] pre-retirement lump sums was illegal").

B. Typicality and Adequacy

Under the typicality requirement, the focus is whether the representative plaintiff's claim is based on the same legal theory and arises from the same conduct that gives rise to the claims of the other members of the proposed class. Rosario, 963 F.2d at 1018 (citing De La Fuente v. Stokely–Van Camp, Inc., 713 F.2d 225, 232 (7th Cir. 1983)). Similarly, "[t]he adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." Amchem Products, Inc. v. Windsor, 521 U.S. 591, 625 (1997). See also CE Design Ltd. v. King Architectural Metals, Inc., 637 F.3d 721, 724 (7th Cir. 2011) ("In many cases . . . the requirement of typicality merges with the further requirement that the class representative will fairly and adequately protect the interests of the class.") To establish that they will represent the interests of the class fairly and adequately, class representatives must show that their claims are not antagonistic to or in conflict with those of the proposed class, they have sufficient interest in the outcome of the case and they are represented by experienced, competent counsel. Rosario, 963 F.2d at 1018.

Defendants do not deny that plaintiff's claim is typical of those of the potential class members in that all claims arise from the same practice of defendants, namely, applying amendments that retroactively change the rate used to calculate lump sum payments. Additionally, the claims are based on the same legal theory that defendants' practice of applying amended rates retroactively reduces a participant's retirement benefit, in violation of the Income Security Plan's anti-cutback provisions. Also, defendants do not challenge the adequacy of the named plaintiff's lawyers, and I conclude that they have the experience and resources to provide representation to the entire class.

However, defendants contend that plaintiff's interests diverge from those of class members who might contend that multiple rates apply to their calculation of benefits. Second, defendants contend that plaintiff is not an adequate class representative because the statute of limitations bars claims brought by some of the potential class members, but would not apply to plaintiff's claim.

1. "Rate or rates"

Plaintiff's proposed class definition includes employees whose lump sum payments "were not calculated using the discount rate *or rates* in effect at the time of their termination of employment." Plaintiff contends that "or rates" is necessary because there may be multiple rates that apply to the calculation of certain class members' lump sum payments, depending on when those class members participated in the plan, when their employment ended and the effective dates of the various amendments to the applicable interest rate. Thus, if an employee participated in the Income Security Plan while two different interest rates were in effect, then that employee's benefits would be calculated under both rates.

Defendants argue that including participants in the class who contend that their lump sum should be calculating using two different rates would create a conflict of interest between plaintiff and the class. In particular, the same rate was in effect for each year plaintiff participated in the plan and defendants contend that plaintiff's theory of liability is inconsistent with a finding that more than one rate may apply. Defendants say that because plaintiff is relying on the preamble of the plan, which states that a participant's rights are determined "solely under the terms of the Plan as in effect on the date of his or her termination of employment or retirement," plaintiff must necessarily be arguing that only the rate in effect at the time of termination should be used to calculate lump sum payments.

Defendants construe plaintiff's preamble arguments too narrowly. Plaintiff is not relying on the preamble to argue that only one rate may apply to lump sum payments. Rather, plaintiff argues that the preamble and the anti-cutback provision in the plan prohibit the plan administrator from retroactively amending the plan. Thus, although a participant may accrue a lump sum benefit consisting of more than one interest rate, the participant's rights are fixed at the date of termination and the rate or rates may not be retroactively amended. There is no significant conflict of interest between plaintiff and the class. Regardless whether the participants had one or more than one rate in effect during the time they participated in the plan, they all have an interest in establishing that defendants are barred from retroactively amending discount rates.

2. Statute of limitations

Defendants' second argument that the requirement of adequacy is not satisfied is that the proposed class includes participants whose claims are barred by the six-year statute of limitations, while plaintiff's claim is not time-barred. Defendants contend that they will raise statute of limitations claims against any participant who received a lump sum payout more than six years before the date of filing. Defendants contend that because plaintiff's claim is not subject to a statute of limitations defense, plaintiff will not be able to adequately represent those whose claims are time barred because he has no incentive to argue vigorously in opposition to the defense.

Plaintiff makes several arguments in response. First, he contends that the court should not consider defendants' particularized defenses when evaluating typicality and adequacy. It is true that particularized defenses should not generally be considered when evaluating typicality, Wagner v. NutraSweet Co., 95 F.3d 527, 534 (7th Cir. 1996), but they may be considered in a court's analysis of adequacy. CE Design Ltd., 637 F.3d at 724-25. Plaintiff's second argument is that none of the potential class members' claims are time barred because the claims did not accrue until plaintiff filed his complaint. Finally, plaintiff contends that he can adequately represent class members who face a statute of limitations defense.

The statute of limitations issue is not as straightforward as plaintiff suggests. The general federal common law rule is that an ERISA claim accrues when the plaintiff knows or should know of conduct that interferes with the plaintiff's rights under ERISA. Thompson v. Retirement Plan for Employees of S.C. Johnson & Son, Inc., 651 F.3d 600, 605 (7th Cir. 2011). Further, "a claim to recover benefits under § 502(a) accrues upon a clear and unequivocal repudiation of rights under the pension plan which has been made known to the beneficiary." Id. (citing Young v. Verizon's Bell Atlantic Cash Balance Plan, 615 F.3d 808, 816 (7th Cir. 2010)). Depending on the circumstances, the statute of limitations may begin running as soon as a participant receives a lump sum payment from a retirement plan. In Thompson, the court of appeals held that the statute of limitations began running as soon as the participants received their lump sum distributions from their cash balance retirement plan because that was when they had all the information they needed to realize that the calculation of their distributions violated the law. Id. at *5. In Young, however, the plaintiff's claim did not accrue when she received her lump sum payment because the case involved a "scrivener's error" and the payment did not place the plaintiff on notice that the plan administrator was not following the literal terms of the plan. Young, 615 F.3d at 814-16. Additionally, by exhausting her administrative remedies, the plaintiff in Young had furnished an alternative accrual date. Id. at 814; see also Thompson, 651 F.3d at 607 (distinguishing Young and pointing out that plaintiff in Young was not seeking "to slip by with no accrual date" at all).

Without further development of this issue, I cannot determine whether the facts of this case are more similar to those in Thompson or those in Young. However, given the holding in Thompson that receipt of a lump sum payment is sufficient to start the statute of limitations in some circumstances, I disagree with plaintiff that defendants cannot assert a colorable statute of limitations defense against participants who received lump sum payments more than six years before this action was filed. Additionally, I agree with defendants that plan participants will need to assert novel statute of limitations theories to overcome the holding in Thompson. Further, because plaintiff's claim is not subject to a statute of limitations defense, he has no incentive to assert such novel theories. Thus, I agree that he cannot be an adequate representative for participants who received their lump sum payments more than six years before this suit was filed.

Finally, although plaintiff suggests that the court could certify two subclasses as I did in Ruppert, 255 F.R.D. at 634, plaintiff has not identified another plaintiff to represent those class members whose claims would be subject to defendants' statute of limitations defense. I cannot certify a subclass without a representative who satisfies the requirements of Rule 23. Thus, I will limit the proposed class to those participants who received lump sum payments after June 23, 2004 (six years before this case was filed on June 23, 2010).

C. Choosing the Proper Type of Class Action under Rule 23(b)

Because plaintiff has shown that he satisfies the four prerequisites set forth in Rule 23(a), the next question is whether the action is "maintainable" as one of the types of class actions listed in Rule 23(b). Plaintiff contends that this action could be maintained as any of the four types of actions but that it would be "preferable" to certify the class under Rule 23(b)(2) or (b)(1) instead of (b)(3), to prevent class members from opting out. Defendants contend that the class should be certified under Rule 23(b)(2), but if necessary, Rule 23(b)(1), rather than (b)(3).

Rule 23(b)(2) permits classes for actions in which "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The Court of Appeals for the Seventh Circuit has explained that a class action may be maintained under this provision "[w]hen the main relief sought is injunctive or declaratory, and the damages are only 'incidental.'" In re Allstate Insurance Co., 400 F.3d 505, 507 (7th Cir. 2005).

Damages are incidental where "the computation of damages is mechanical, 'without the need for individual calculation.'" Id. (citation and quotation omitted). The injunctive relief must "provide 'final' relief as required by Rule 23(b)(2)," and not "merely lay an evidentiary foundation for subsequent determinations of liability." Randall v. Rolls-Royce Corp., 637 F.3d 818, 825-26 (7th Cir. 2011) (holding that employment discrimination class action could not be maintained under Rule 23(b)(2) where calculating damages would require 500 separate hearings).

The Court of Appeals for the Seventh Circuit has decided that ERISA class actions seeking a declaration of the illegality of a plan's method of calculating lump sums may be certified under Rule 23(b)(2). Berger v. Xerox Corp. Retirement Income Guarantee Plan, 338 F.3d 755, 763-64 (7th Cir. 2003). In Berger, the court of appeals explained that when the plaintiffs contend that the plan miscalculated lump sum benefits, "[t]he declaration establishe[s] the right of each of the class members, and the computation of the damages due each follow[s] mechanically." Berger, 338 F.3d at 764 (citing Allison v. Citgo Petroleum Corp., 151 F.3d 402, 414-15 (5th Cir. 1998)).

Although the Supreme Court's recent decision in Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011), did not involve an ERISA case, it casts doubt on whether a class action seeking monetary relief, even if incidental to declaratory and injunctive relief, may be maintained under Rule 23(b)(2). The Supreme Court stated that Rule 23(b)(2) "does not authorize class certification when each class member would be entitled to an individualized award of monetary damages" and that "individualized monetary claims belong in Rule 23(b)(3)." Id. at 2557-58. Nonetheless, the Supreme Court did not hold that incidental monetary relief can never be awarded to a Rule 23(b)(2) class and did not purport to overrule cases such as Berger, in which courts have concluded that certain ERISA claims may be maintained under Rule 23(b)(2) because the monetary relief sought by the plaintiffs is incidental and can be calculated mechanically following a declaration in their favor. Without further guidance from the Supreme Court or the court of appeals on this issue, I will continue to follow Berger. In this case, as in Berger, the ultimate monetary relief sought by plaintiff and class members is simply a direct consequence of the requested declaration that the lump sums must be calculated as plaintiff believes the plan requires.

Additionally, even if this proposed class could not be maintained under Rule 23(b)(2), I conclude that it could be maintained under Rule 23(b)(1), which covers actions for which "prosecuting separate actions" would create certain risks, including a risk of "inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Rule 23(b)(1)(A). Suits by individual participants regarding the proper calculation for lump sum payments could create inconsistent standards for the plan administrators to apply. Thus, it is appropriate to consider the issue on a classwide basis.

Because I conclude that the class may be certified under Rule 23(b)(1) or (2), it is not necessary to determine whether it may also be certified under Rule 23(b)(3). Ruppert, 255 F.R.D. at 637 (allowing class to be maintained under Rule 23(b)(3), which allows class members to opt out, would be counterproductive if class is maintainable under Rule 23(b)(1) or (2), which does not allow opt out).

## D. Appointment of Class Counsel

Under Fed. R. Civ. P. 23(g)(1), a court that certifies a class must appoint class counsel, taking into consideration "the work counsel has done in identifying or investigating potential claims in the action"; "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action"; "counsel's knowledge of the applicable law"; and "the resources that counsel will commit to representing the class." Plaintiff has shown that his proposed lead class counsel, Maslon Edelman Borman & Brand LLP, satisfies the requirements of Rule 23(g). It will be appointed as class counsel.

## E. Notice

The proposed class satisfies the prerequisites for Rule 23(a) and can be maintained under Rule 23(b)(1) or (2). The next step is deciding whether the proposed class members should receive some notice of this action. Neither party has requested the opportunity to notify the class, but that does not resolve the matter. Under Rule 23(c)(2)(A), "[f]or any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class." Although the language of 23(c)(2)(A) is permissive, it is the court's duty to determine whether notice is proper. As I explained in a previous case,

> When Rule 23 was amended in 2003 to provide explicitly for a permissive notice provision for classes such as this one certified under Rule 23(b)(1) or (b)(2), it was to emphasize that members of these types of class actions "have interests that may deserve protection by notice." To decide whether notice is proper in such actions, the court should "balanc[e] the risk that notice costs may deter the pursuit of class relief against the benefits of notice."

Ruppert, 255 F.R.D. at 637-38 (quoting Fed. R. Civ. P. 23, advisory committee note of 2003).

Because neither party addresses this matter, it remains unclear whether notice would be appropriate. The parties should consult on this issue and submit their position(s) on this matter to the court on or before October 24, 2011. If the court determines that notice is appropriate, the cost of notice will be plaintiffs' burden barring good cause shown. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 179 (1974) ("[T]he plaintiff must pay for the cost of notice as part of the ordinary burden of financing his own suit.").

ORDER

IT IS ORDERED that

1. Plaintiff's motion for certification of a class action under Fed. R. Civ. P. 23, dkt. #87, is GRANTED; a class is certified and defined as follows:

> Employees who received a lump-sum distribution under the MONY Life Retirement Income Security Plan after June 23, 2004, but whose lump sum payments were not calculated using the discount rate or rates in effect at the time of their termination of employment, as well as all participants who are entitled to receive but have not yet received such lump-sum distributions. The Class includes the surviving spouses or beneficiaries of any deceased Class members.

2. Maslon Edelman Borman & Brand LLP is appointed class counsel under Fed. R. Civ. P. 23(g).

3. The parties may have until October 24, 2011 in which to consult and present their position(s) regarding whether issuance of notice is proper in this case.

Entered this 14th day of October, 2011.

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