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,

OPINION and 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.

- -

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. The case is before the court on defendants' motion to dismiss the

complaint, dkt. #25, in which they contend that the pleadings show that the administrator's calculations of plaintiff's lump sum distributions under both plans was correct and reasonable.

After reviewing the pleadings and briefs submitted by the parties, I conclude that plaintiff has stated a claim that defendants violated ERISA by applying the incorrect discount rate to calculate his lump sum benefit under the MONY Life Retirement Income Security Plan for Employees. I conclude that plaintiff has failed to state a claim that defendants violated ERISA or state law by miscalculating his benefits under the Excess Benefit Plan for MONY Employees.

The following facts are drawn from plaintiff's amended complaint and the documents referred to in the complaint that were submitted by defendants, including the 1994 Retirement Income Security Plan and 2009 amendment, the Excess Benefit Plan and the written correspondence between counsel for plaintiff and the plan administrator regarding plaintiff's claim for benefits. Wright v. Associated Insurance Cos., 29 F.3d 1244, 1248 (7th Cir. 1994) ("[D]ocuments attached to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to his claim. Such documents may be considered by a district court in ruling on the motion to dismiss.")

ALLEGATIONS OF FACT

A. The Parties

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 two employee retirement plans sponsored by MONY: (1) the MONY Life Retirement Income Security Plan for Employees, which I will refer to as the Income Security Plan, a defined benefit pension plan; and (2) the Excess Benefit Plan for MONY Employees, the Excess Plan, an unfunded defined benefit plan for highly compensated MONY employees. When plaintiff reached age 55 in 2009, he became entitled to distribution of his benefits from those plans. Rather than receive his benefits in the form of monthly annuity payments, plaintiff invoked his option under each plan to receive his benefit in the form of a single, lump sum payment.

B. MONY Retirement Plans

1. 1994 Income Security Plan

Defendant 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. The plan allows a participant to 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 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.

2. Excess Benefit Plan

The Excess Plan provides benefits to highly compensated employees "in excess of the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code." Excess Plan, dkt. #27-5, § 1.B. The Excess Plan is administered by a Benefit Plan Administration Committee appointed by defendant MONY and confers on MONY the "exclusive right to interpret" the plan and "to decide any matters arising hereunder in the administration of the Plan." Id., § 7.D.

The Excess Plan does not contain its own formula for calculating a participant's accrued benefit or specify its own rate for converting an accrued benefit in its normal annuity

form into a lump sum payment. Rather, the plan's benefits calculation references the Income Security Plan, stating:

> Excess Retirement Plan Benefits shall be paid to each such Employee or other applicable payee validly designated by or for such Employee under the [Income Security Plan], in accordance with an automatic payout provision of the [Income Security Plan], or where applicable, in accordance with any effective election made by the Employee or other applicable payee under the [Income Security Plan] with respect to benefits under the [Income Security Plan]. . . . Excess Retirement Plan Benefits shall commence on the same date and shall be in the same form as the benefits under the [Income Security Plan], unless a different payout option is elected by such Employee or other applicable payee, however, the different payout option must be one that is available under the [Income Security Plan].

Id., § 5.A.

Section 1.36 of the 1994 Income Security Plan contains the formula for calculating lump sum benefits. It provides that the "interest rate used to determine the Equivalent Actuarial Value of any lump sum payment that may be made under the Plan" cannot be greater than certain specified limits and that the PBGC rate will be used "[f]or purposes of determining the lump sum value of a retirement benefit." The section goes on to say that "[f]or other purposes," a 7.5% interest rate will be used. 1994 Income Security Plan, dkt. #27-1, § 1.36. The only example provided in § 1.36 of "other purposes" is the conversion of a participant's employer contribution account balance into the "normal form of benefit," which § 9.1 of the plan defines as an annuity. Id.

C. Plaintiff's Claims for Benefits

Plaintiff became eligible for distribution under both the Income Security Plan and the Excess Plan in 2009, when he reached age 55. By letter dated April 28, 2009, plaintiff (through counsel) requested payment of his retirement benefits under both plans in the form of lump sum payments. Dkt. #27-6. The letter requested that both lump sum amounts 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 two checks from the plans' administrator. He 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, and a check for $218,726.38, representing the administrator's calculation of plaintiff's accrued benefit under the Excess Plan as a lump sum distribution. The amounts were 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, which had the effect of reducing plaintiff's lump sum distributions under the plans.

On June 5, 2009, plaintiff's counsel sent a letter to the Income Security Plan and Excess Plan administrator, contending that the lump sum amounts provided to plaintiff were too low because they were 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 equitable 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. 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."

On October 19, 2009, Grevelding wrote again to plaintiff's counsel on behalf of the administrator of the Excess Plan to inform counsel that rather than using the PBGC rate for calculating plaintiff's lump sum payment under the Excess Plan, the plan administrator had employed a discount rate of 7.5%. Dkt. #27-11. Grevelding acknowledged that the Excess Plan does not set forth its own method for calculating lump sum payments but instead "relies on the [discount formula] stated in the [Income Security Plan]." Grevelding stated that the plan administrator "has never used the PBGC interest rate" for lump sum payments under the Excess Plan. Quoting § 1.36 of the Income Security Plan, she stated that although the 1994 Income Security Plan employed the PBGC rate for calculating lump sum values for benefits under the plan itself, it provided a separate interest rate of 7.5% to be used for "other purposes" and that in the administrator's opinion, the "other purposes" for which the 7.5% rate applied "includes payments under the Excess Plan."

In letters dated August 17, 2009 and November 2, 2009, plaintiff appealed the administrator's determinations regarding the Income Security Plan and Excess Plan benefits to the plans' Benefits Appeals Committee. Dkt. ##27-9, 27-12. He reiterated his contention that the current PBGC rate applied to conversion of his accrued benefit to a lump

sum form for both plans 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. With respect to the Excess Plan, plaintiff contended that the administrator erred in interpreting the relationship between it and the Income Security Plan.

In letters dated November 3, 2009 and January 5, 2010, the Benefit Appeals Committee denied plaintiff's claims. Dkt. ##27-10, 27-13. With respect to his Income Security Plan benefits, the committee stated that the question to be resolved on appeal was "whether the interest rate prescribed by the Income Security Plan document at the time of [plaintiff's] termination should be used or whether the interest rate prescribed by the Income Security Plan document at the time of the benefit payment should be used." Dkt. #27-10, at 5. 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 protection to plaintiff from the amendment because it provides 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.

With respect to the Excess Plan, the committee affirmed the conclusion that the 7.5% interest rate used for "other purposes" mentioned in the Income Security Plan "includes payments under the Excess Plan." Dkt. #27-13, at 5.

OPINION

Defendants have moved to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted, contending that plaintiff's amended complaint, including the plan documents and administrative record, show that the administrator's calculation of plaintiff's lump sum benefits using the segment rate for the Income Security Plan benefit and the 7.5% rate for the Excess Plan benefit was not unreasonable or arbitrary and capricious.

Motions to dismiss test the sufficiency, not the merits, of the case. Gibson v. City of Chicago, 910 F.2d 1510, 1520 (7th Cir. 1990). To survive a motion to dismiss under federal notice pleading, a plaintiff must "provide 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). In deciding a motion to dismiss, the court treats well-pleaded allegations as true and draws all reasonable inferences in the plaintiff's favor. Disability Rights Wisconsin, Inc. v. Walworth County Bd. of Supervisors, 522 F.3d 796, 799 (7th Cir. 2008).

Where, as under the Income Security Plan and Excess Plan, "a plan administrator is given discretion to interpret the provisions of the plan, the administrator's decisions are reviewed using the arbitrary and capricious standard." Wetzler v. Illinois CPA Society & Foundation Retirement Income Plan, 586 F.3d 1053, 1057 (7th Cir. 2009) (citing Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989)). "Under that standard, an administrator's interpretation is given great deference and will not be disturbed if it is based on a reasonable interpretation of the plan's language." Id.; see also Mein v. Carus Corp., 241 F.3d 581, 586 (7th Cir. 2001) (When "a plan gives the administrator discretion to interpret the plan, his interpretation is entitled to great deference. . . ."). The question is whether the administrator's decision has "rational support in the record." Jenkins v. Price Waterhouse Long Term Disability Plan, 564 F.3d 856, 860-61 (7th Cir. 2009) (citation and quotation omitted). However, "unambiguous terms of a pension plan leave no room for the exercise of interpretive discretion by the plan's administrator." Call v. Ameritech Management Pension Plan, 475 F.3d 816, 822-23 (7th Cir. 2007). If a plan is unambiguous, the

administrator must implement and follow the plain language of the plan, in so much as it is consistent with the statute. Id.; 29 U.S.C. § 1104(a)(1)(D). At the motion to dismiss stage then, plaintiff's allegations imply that the administrator's decision was arbitrary and capricious or contrary to an unambiguous provision in the plan.

A. Income Security Plan

Plaintiff objects to the calculation of his lump sum benefit under the Income Security Plan on the basis of two provisions of the 1994 plan. First, the preamble prohibited the administrator from applying the segment rate adopted by plan amendment after the termination of his employment. The preamble requires the administrator to determine a participant's benefits under the plan "solely under the terms of the Plan as in effect on the date of his or her termination of employment or retirement," unless a particular amendment is "otherwise made applicable to former Employees." 1994 Income Security Plan, dkt. #27-1, Purpose.

Second, the administrator's application of the segment rate violates the 1994 Plan's anti-cutback provision, § 13.1.1(b), which prohibits plan amendments that would "reduce the Accrued Benefit of any participant," or "eliminate an optional form of benefit." Notably, plaintiff does not contend that the administrator's calculation of his lump sum benefit violated ERISA's anti-cutback provision, 29 U.S.C. § 1054(g), which prohibits a plan from

decreasing the accrued benefits or eliminating the optional benefits of participants. ERISA's anti-cutback provision provides exemptions for certain amendments to the discount rate used to calculate the present value of a participant's benefit. Treas. Reg. 1.417(e)-1(d)(10)(v). Plaintiff contends only that application of the segment rate violates the terms of the plan itself. E.g., Call, 475 F.3d at 822-23 (plan amendment that specified two options for calculating lump-sum distribution amounts violated plan's own anti-cutback provision, even though it was exempted by statute from anti-cutback section of ERISA).

The parties dispute the correct interpretation of the preamble and the anti-cutback provision. Plaintiff contends that the administrator's interpretation renders the provisions illusory, fails to apply established canons of interpretation, fails to consider the significance of particular words and is contrary to the court of appeals' decision in Call, 475 F.3d 816. Defendant contends that the administrator's interpretation of the plan and calculation of plaintiff's Income Security Plan benefits is reasonable based on the language of the plan and ERISA and accordingly is entitled to deference.

Plaintiff's amended complaint and the incorporated documents are sufficient to state a claim that the administrator's decision to use the segment rate was unreasonable. The administrator's initial decision shows that she misunderstood the law that applied to the calculation of lump sum benefits. She insisted that § 417(e) of the Internal Revenue Code "sets forth the interest rate and the mortality tables that *must* be used to convert to a lump

sum" and that "the Plan is *required* to calculate lump sums as provided by Section 417(e)." Dkt. #27-8, at 3 (emphasis added). This is incorrect as a matter of law. Section § 417(e) specifies the maximum interest rate that may be used to determine the actuarial equivalent of the accrued benefit, but a pension plan is free to use a different discount rate as long as the present value calculated is "not less than the present value calculated by using the applicable mortality table and the applicable interest rate." 26 U.S.C. § 417(e)(3)(A). In addition, the administrator did not consider whether application of the segment rate violated the anti-cutback provision of the Income Security Plan.

When the Benefit Appeals Committee reviewed the administrator's decision, it framed the question as "whether the interest rate prescribed by the Income Security Plan document at the time of [plaintiff's] termination should be used or whether the interest rate prescribed by the Income Security Plan document at the time of the benefit payment should be used." Dkt. #27-10, at 5. It overlooked the fact that the committee never discussed the interest rate to be applied *at the time of the benefit payment*. Instead, the committee determined that the segment rate was the "actuarial equivalent" of plaintiff's accrued benefit, noted that application of the 2009 amendment did not violate the preamble and 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. at 6. However, plaintiff alleges that the 2009 amendment adopting the segment rate was not "prescribed by the [Income Security Plan]

document" until July 2009, after plaintiff had requested and received a lump sum payment from the plan. Thus, even though the committee concluded that plaintiff's lump sum payment should be calculated using the rate in place when the payment was disbursed, it affirmed the administrator's decision to calculate the payment using a formula that was not in place when plaintiff's payment was disbursed.

In sum, the record in the case implies that the administrator's based her decision on a misunderstanding of the law and the committee based its decision on a misunderstanding of the facts, as well as a failure 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, 475 F.3d 816. Ordinarily, a plan administrator's interpretation of a plan is entitled to deference, but that deference can be "overridden . . . by the lack of any reasoned basis for that interpretation," id., at 822, or "when the evidence of record demonstrates that the [administrator] entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before it or is so implausible that it could not be ascribed to a difference in view or the product of its expertise," Lister v. Stark, 942 F.2d 1183, 1189 (7th Cir. 1991) (internal citations and quotations omitted). It appears from the pleadings, including the explanations provided by the administrator and Benefit Appeals Committee, that plaintiff has stated a plausible claim that his benefits were calculated incorrectly. Thus, dismissal of plaintiff's

claim under the Income Security Plan would be premature at this stage.

B. Excess Plan

Plaintiff's second claim challenges the administrator's application of the 7.5% discount rate to calculate his lump sum payment under the Excess Plan. As an initial matter, it is not clear whether the Excess Plan is governed by ERISA or New York law, and neither party has developed the choice of law question fully. (Section 7(E) of the Excess Plan states that "[t]his Plan shall be construed, enforced and administered according to the laws of the State of New York and any federal law or regulation governing the provisions or administration of this Plan.") However, I do not need to resolve this issue, because both ERISA and New York law require deference to an administrator's reasonable interpretation when the plan documents give the administrator exclusive authority to construe and apply the plan. E.g., Piccola v. Lupe, 105 A.D.2d 1038, 1040 (N.Y.A.D. 1984); Meckes v. Cina, 429 N.Y.S.2d 936, 937-38 (N.Y. App. Div. 1980), aff'd, 429 N.E.2d 425 (N.Y. 1981).

The parties agree that the Excess Plan does not contain its own formula for calculating lump sum payouts, and that it incorporates terms from the Income Security Plan. The Income Security Plan, however, includes several interest rates that may be used to calculate actuarial equivalency, and the Excess Plan does not specify which of those rates should be used for that purpose. Thus, the administrator must determine which rate to use for

calculating the lump sum value of Excess Plan benefits. Plaintiff contends that the administrator's interpretation of the Excess Plan and Income Security Plan was unreasonable because the plans unambiguously require that the same rate used to calculate the lump sum payments due under the Income Security Plan must be used to calculate lump sum payments due under the Excess Plan. Plaintiff points to language in the Excess Plan saying that retirement benefits "shall commence on the same date and shall be in the same form as the benefits under the Retirement Plan [the Income Security Plan], unless a different payout option is elected by such Employee or other applicable payee, however, the different payout option must be one that is available under the Retirement Plan." Excess Plan, dkt. #27-5, § 1.5. Plaintiff contends that "in the same form" means that the payments must be calculated using the same discount rate, regardless of the form a participant chooses. In addition, the Income Security Plan says that the PBGC rate should be used for "determining the lump sum value of *a* retirement benefit." Income Security Plan, dkt. #27-1, § 1.36 (emphasis added). Thus, plaintiff's argue, because the Excess Plan benefits are *"a* retirement benefit," the PBGC rate should also be used to determine the lump sum value under the Excess Plan. Finally, plaintiff argues that the administrator's interpretation produces an absurd result because it limits a participant's benefits under the Excess Plan, contrary to the purpose of the plan which is to provide benefits "in excess of limitations on contributions and benefits imposed by" ERISA on the Income Security Plan.

The problem for plaintiff is that although his proposed interpretations of the Income Security Plan and Excess Plan are plausible, the record before the court establishes that the administrator's finding that the 7.5% rate should be applied to the Excess Plan is not unreasonable. The language of the plans is ambiguous, in that neither plan explains explicitly what rate should be used to calculate lump sum payments under the Excess Plan. Section 1.36 of the 1994 Income Security Plan begins by defining Equivalent Actuarial Value, stating that the "interest rate used to determine the Equivalent Actuarial Value of any lump sum payment that may be made under the Plan" cannot be greater than certain specified limits. Thus, the first mention of lump sum payments in § 1.36 of the Income Security Plan refers specifically to the interest rate applicable to the calculation of lump sum payments under Income Security Plan itself. The provision goes on: "[f]or purposes of determining the lump sum value of a retirement benefit, the PBGC . . . rate . . . is used." The final sentence of the section provides that a fixed 7.5% rate applies "[f]or other purposes."

Citing this language, the administrator concluded that the PBGC rate applies to benefits under the Income Security Plan, while the "other purposes" rate covers any calculations that are not made under the Income Security Plan itself. In the face of this ambiguous language, the administrator's interpretation is not arbitrary and capricious and is entitled to deference. I am not persuaded by plaintiff's argument that the administrator's

interpretation leads to an absurd result. Although the Excess Plan was enacted to provide benefits in addition to those provided by the Income Security Plan, plaintiff has provided no legal explanation for his argument that the administrator must construe the plan to provide the most generous benefits possible. In sum, plaintiff has not stated a claim that the administrator's calculation of his benefits under the Excess Plan was unreasonable. Therefore, I will dismiss this claim.

ORDER

IT IS ORDERED that the motion to dismiss 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 is GRANTED with respect to plaintiff John Dennison's claim that his benefits under the Excess Benefit Plan were calculated incorrectly in violation of the Employment Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, or New York law. Defendants' motion is DENIED with respect to plaintiff's claim that defendants violated ERISA by applying the wrong discount rate to calculate his benefits under the MONY Life Retirement Income

Security Plan for Employees.

Entered this 17th day of December, 2010.

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