IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH L. MYERS, *et al.*, Plaintiffs, v. BRICKLAYERS AND MASONS LOCAL 22 PENSION PLAN, *et al.*, Defendants.	: : : :	Case No. 3:13-cv-75 JUDGE WALTER H. RICE

DECISION AND ENTRY SUSTAINING DEFENDANTS BRICKLAYERS AND TROWEL TRADES INTERNATIONAL PENSION FUND AND THE BOARD OF TRUSTEES OF THE BRICKLAYERS AND TROWEL TRADES INTERNATIONAL PENSION FUND'S MOTION TO DISMISS THE AMENDED COMPLAINT (DOC. #24); CONFERENCE CALL SET WITH COUNSEL FOR PLAINTIFFS AND REMAINING DEFENDANTS

Plaintiffs Kenneth and Kim Myers filed suit under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 *et seq.*, challenging the denial of two claims for disability retirement benefits. Defendants include the Bricklayers and Masons Local 22 Pension Plan ("Local 22") and its Board of Trustees (collectively the "Local 22 Defendants"), and the Bricklayers and Trowel Trades International Pension Fund ("IPF") and its Board of Trustees (collectively the "IPF Defendants"). This matter is currently before the Court on the IPF Defendants' Motion to Dismiss the Amended Complaint, Doc. #24. For the reasons set forth below, the Court SUSTAINS that motion.

I. Background and Procedural History

According to the Amended Complaint, Doc. #19, Plaintiff Kenneth Myers ("Myers") was employed in the masonry business from April of 1989 until December 2, 2009, when, in his early 40s, he suffered a heart attack that left him totally and permanently disabled. At that time, he was a participant in two pension funds, the Bricklayers and Masons Local 22 Pension Plan ("Local 22"), and the Bricklayers and Trowel Trades International Pension Fund ("IPF"). These are employee benefit plans governed by ERISA. Myers's wife, Kim, is a beneficiary under both Plans.

Following his heart attack, Myers applied for disability retirement benefits under both Plans. In 2011, the Local 22 Pension Plan denied his application. Because Myers had incurred a break in service in Plan Years 2005, 2006, 2007, 2008, and 2009, he was not considered to be an "active participant" in the Plan. In the Amended Complaint, Plaintiffs allege that this decision was arbitrary and capricious.

Myers also applied for disability retirement benefits through the IPF. On March 1, 2012, he was awarded $515.00 per month retroactive to January 1, 2011. However, on April 9, 2012, this award was suspended and he was directed to reimburse the IPF Plan for benefits already paid, because the IPF learned that, while laid off from union employment in 2005 and 2006, Myers had worked in "noncovered masonry employment." The Plan defines this term as employment in

the masonry industry "on or after June 1, 1988 for an employer, which does not have, or self-employment, which is not covered by, a collective bargaining agreement between the Union and the employer." Doc. #24-3, PageID#196.[1] Pursuant to Article IV, §4.09(e) of the Plan, this rendered him ineligible for disability retirement benefits, even though he met all other qualifications. *Id.* at PageID#198. He did not appeal this adverse benefit determination.

Myers does not deny that he falsely certified in his application for disability benefits that he had not engaged in any "noncovered masonry employment" since June 1, 1988. Doc. #24-2, PageID#193. He nevertheless argues that the suspension of his disability benefits is arbitrary and capricious, and is contrary to law, because application of Article IV, §4.09(e) of the Plan violates ERISA's non-forfeiture and anti-cutback provisions as set forth in 29 U.S.C. §§ 1053-1054. He further alleges that, in adopting and enforcing §4.09(e), the IPF Board of Trustees breached its fiduciary duty under ERISA, 29 U.S.C. § 1104 (a)(1)(A)(i), and its duty to act for the sole and exclusive benefit of the employees and their families as required by the Labor Management Reporting and Disclosure Act ("LMRA"), 29 U.S.C. §186(c)(5). Plaintiffs seek an order retroactively restoring disability retirement benefits, along with interest, and attorneys' fees.

---

[1] "[W]hen a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment." *Commercial Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 335-36 (6th Cir. 2007).

On August 16, 2013, the IPF Defendants filed a Motion to Dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).[2] Doc. #24. They argue that because ERISA's non-forfeiture and anti-cutback provisions do not apply to disability benefits, Plaintiffs have failed to state a claim upon which relief can be granted. They also argue that the Court lacks authority to grant the requested injunctive relief under the LMRA. After the motion was fully briefed, the Court, at Plaintiffs' request, heard oral argument on October 28, 2013.

II. ERISA Claims

A. Rule 12(b)(6) Standard of Review

Federal Rule of Civil Procedure 8(a) provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The complaint must provide the defendant with "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Federal Rule of Civil Procedure 12(b)(6) allows a party to move for dismissal of a complaint on the basis that it "fail[s] to state a claim upon which relief can be granted." The moving party bears the burden of showing that the opposing party has failed to adequately state a claim for relief. *DirecTV, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007) (citing *Carver v. Bunch*, 946 F.2d 451, 454-55 (6th Cir.

---

[2] Plaintiffs' claims against the Local 22 Defendants are outside the scope of the pending motion.

1991)). The purpose of a motion to dismiss under Rule 12(b)(6) "is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993). In ruling on a 12(b)(6) motion, a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Handy-Clay v. City of Memphis,* 695 F.3d 531, 538 (6th Cir. 2012) (quoting *Treesh*, 487 F.3d at 476).

To survive a motion to dismiss under Rule 12(b)(6), the complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Unless the facts alleged show that the plaintiff's claim crosses "the line from conceivable to plausible, [the] complaint must be dismissed." *Id.* Although this standard does not require "detailed factual allegations," it does require more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id.* at 555. "Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). Legal conclusions "must be supported by factual allegations" that give rise to an inference that the defendant is, in fact, liable for the misconduct alleged. *Id.* at 679.

B. ERISA's Non-Forfeiture and Anti-Cutback Provisions

At this juncture, the key issue in this case is whether the IPF's disability retirement benefits are "accrued benefits" that are subject to the non-forfeiture and

anti-cutback provisions of ERISA. For the reasons set forth below, the Court finds that they are not. As such, Plaintiffs have failed to state a claim upon which relief can be granted.

1. Relevant Law

ERISA was enacted, in large part, to ensure that employees receive promised pension benefits. *Thornton v. Graphic Communications Conf. of Int'l Bhd. of Teamsters Supp. Ret. and Disability Fund*, 566 F.3d 597, 601 (6th Cir. 2009). ERISA's non-forfeiture and anti-cutback provisions, set forth in 29 U.S.C. §§ 1053 and 1054, were enacted in furtherance of this goal.

The non-forfeiture provision states as follows:

> Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.
>
> (1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.
>
> (2)(A)(i) In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).
> (ii) A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.
> (iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table . . .

29 U.S.C. § 1053(a)(1)-(2)(A).

The anti-cutback provision governs plan amendments that decrease a participant's accrued benefits. It states, in relevant part:

> (1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan . . .
>
> (2) For purposes of paragraph (1), a plan amendment which has the effect of--
> (A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or
> (B) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits . . .

29 U.S.C. § 1054(g). As the Sixth Circuit has noted, the Internal Revenue Code contains a nearly identical provision, disqualifying from tax-exempt status any pension plan that violates the anti-cutback rule. *Thornton*, 566 F.3d at 602 (citing I.R.C. § 411(d)(6)).

2. Disability Benefits Fall Outside Scope of §§ 1053 and 1054

Plaintiffs allege that Article IV, §4.09(e) of the IPF Plan, which renders participants who work in "noncovered masonry employment" ineligible for disability retirement benefits, violates ERISA's non-forfeiture and anti-cutback provisions. The IPF Defendants argue, however, that because these provisions do not apply to employee welfare benefit plans such as the IPF disability retirement benefit plan, Plaintiffs have failed to state a claim upon which relief can be granted. The Court agrees.

An "employee welfare benefit plan" is expressly excluded from the scope of 29 U.S.C. §§1051-1061. *See* 29 U.S.C. § 1051(1). Therefore, if the IPF

disability retirement benefit plan is an "employee welfare benefit plan," the non-forfeiture and anti-cutback provisions set forth in §§ 1053 and 1054 are inapplicable. ERISA defines an "employee welfare benefit plan" as follows:

> any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, *to the extent that* such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or *benefits in the event of* sickness, accident, *disability*, death or unemployment . . .

29 U.S.C. § 1002(1) (emphasis added).

In *McBarron v. S&T Industries, Inc.*, 771 F.2d 94 (6th Cir. 1985), the court held that the disability plan at issue, which was a subsection of a comprehensive retirement plan, was excluded from ERISA's anti-forfeiture provision by the plain language of the statute. It noted that because Congress used the words "to the extent that" instead of "solely," Congress clearly "intended to allow any plan or part of a plan having disability provisions to be considered an 'employee welfare benefit plan,' and thus be exempt from the anti-forfeiture provisions." *Id.* at 98. *See also Gibbs v. CIGNA Corp.*, 440 F.3d 571, 576 (2d Cir. 2006) ("Long-term disability plans fall within ERISA's definition of an 'employee welfare benefit plan.'").

Likewise, in *Rombach v. Nestle USA, Inc.*, 211 F.3d 190, 193-94 (2d Cir. 2000), the court, relying on *McBarron*, found that the disability retirement pension plan, which was included as part of the "master" pension plan, was an "employee

welfare benefit plan," to which ERISA's anti-cutback provision did not apply.[3] *See also Anderson v. Suburban Teamsters of N. Ill. Pension Fund Bd. of Trs.*, 588 F.3d 641, 651 (9th Cir. 2009) (holding that the "disability retirement pension is not subject to the anti-cutback rule because it is an employee welfare benefit plan.").

The Court finds that *McBarron* is dispositive. As discussed below, Plaintiffs' efforts to sidestep it are unavailing.

3. Plaintiffs' Arguments Lack Merit

Plaintiffs insist that the IPF disability retirement benefit plan is not an "employee welfare benefit plan," but a "pension plan" bound by ERISA's non-forfeiture and anti-cutback provisions. They first argue that, because the IPF Defendants have styled it a "Disability Pension" plan, and because it is included in the master "Pension Plan," the IPF Defendants should be estopped from arguing that it is not a pension plan. The title of the plan, however, is not controlling; it is the substance that is dispositive. As the court held in *Rombach*:

> [I]t does not matter that Nestle called the disability retirement pension portion of its plan a "pension benefit" and made it part of its master "pension plan." Its meaning and function remained clear; it was a benefit triggered by disability. And, under the plain language of the statute, "to the extent" that Nestle's Pension Plan provides benefits that are triggered by disability, that portion of the plan is a welfare plan under § 1002(1).

211 F.3d at 194.

---

[3] Although *McBarron* dealt with ERISA's non-forfeiture provision, and *Rombach* dealt with ERISA's anti-cutback provision, the same reasoning applied to both situations.

Plaintiffs next argue that the disability retirement benefit plan is akin to a lifetime annuity that falls within ERISA's definition of a "pension plan." ERISA defines a "pension plan" to mean:

> any plan, fund, or program . . . established or maintained by an employer . . . to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program--
>
> (i) provides retirement income to employees, or
> (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond . . .

29 U.S.C. § 1002(2)(A). The IPF's Summary Plan Description provides that "[t]he Disability Pension will continue for life, provided you remain totally and permanently disabled." Doc. #24-5, PageID#215. Plaintiffs maintain that because the disability benefits extend beyond the termination of covered employment, they must be deemed a "pension plan."

Plaintiffs' reliance on this subsection of the definition is misplaced. As the IPF Defendants point out, disability benefits under the Plan are not guaranteed for life. Rather, benefits continue only as long as the participant remains totally and permanently disabled. As the court held in *Robinson v. Sheet Metal Workers' National Pension Fund, Plan A*, 441 F. Supp.2d 405, 418 (D. Conn. 2006), *aff'd in part, dismissed in part*, 515 F.3d 93 (2d Cir. 2008), a disability benefit plan that is triggered by a disability and terminates when the beneficiary is no longer disabled is a welfare benefit plan, not a pension plan, and therefore is "not subject to ERISA's anti-cutback rule." Likewise, in this case, the benefits at issue are triggered by a disability and continue only as long as the participant remains

disabled. Doc. #24-5, PageID##214-15. Accordingly, the disability retirement benefit plan is an employee welfare benefit plan, not a pension plan.

Plaintiffs' efforts to characterize the disability retirement benefits as "accrued benefits" also lack merit. This is crucial because only "accrued benefits" are protected by ERISA's non-forfeiture and anti-cutback provisions. Plaintiffs' argument, as the Court understands it, is based on the fact that, according to the Summary Plan Description, "[t]he monthly Disability Pension is figured in the same manner as the Normal Pension. Regardless of your age at disability, your benefit will be calculated as though you were age 64." Doc. #24-5, PageID#214. In other words, the disability benefit is not actuarially reduced to account for the fact that the participant has not yet reached the "normal retirement age" of 64. *See* Doc. #24-3, PageID#196.

In the case of a defined benefit plan, "accrued benefits" are defined by ERISA as "the individual's accrued benefit determined under the plan and, except as provided in section 1054(c) of this title, expressed in the form of an annual benefit commencing at normal retirement age." 29 U.S.C. § 1002 (23)(A). Plaintiffs appear to argue that because the disability benefits at issue are *identical in amount* to the "annual benefit commencing at normal retirement age," the disability benefits must be deemed "accrued benefits."

United States Treasury regulations, however, define an "accrued benefit" in the case of a defined benefit plan as follows:

> (i) If the plan provides an accrued benefit in the form of an annual benefit commencing at normal retirement age, such accrued benefit, or
>
> (ii) If the plan does not provide an accrued benefit in the form described in subdivision (i) of this subparagraph, an annual benefit commencing at normal retirement age which is the actuarial equivalent (determined under section 411(c)(3) and § 1.411(c)–5 of the accrued benefit determined under the plan. In general, *the term "accrued benefits" refers only to pension or retirement benefits*. Consequently, *accrued benefits do not include ancillary benefits not directly related to retirement benefits such as* payment of medical expenses (or insurance premiums for such expenses), *disability benefits not in excess of the qualified disability benefit* (see section 411(a)(9) and paragraph (c)(3) of this section), . . .

26 C.F.R. § 1.411(a)–7(a)(1) (emphasis added). *See also Green v. Holland*, 480 F.3d 1216, 1228 (11th Cir. 2007) (rejecting argument that disability benefits were an "accrued benefit" subject to anti-cutback rule).

Plaintiffs nevertheless contend that the disability retirement benefits are "accrued benefits" because: (1) they are "directly related to retirement benefits" in that the amounts are identical; and (2) they are "in excess of the qualified disability benefit" in that they are not actuarially reduced.

Plaintiffs note that, for purposes of determining the "normal retirement benefit," ERISA defines a "qualified disability benefit" as "a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age." 29 U.S.C. § 1002(22). IRS regulations contain substantially similar definitions. *See* 26 C.F.R. § 1.411(a)–7(c)(3) ("a qualified disability benefit is a disability benefit which is not in excess of the amount of the benefit which would be payable to the

participant if he separated from service at normal retirement age."). But notably, neither the statute nor the regulation requires that, in determining whether the disability benefit "exceeds" the benefit that would be payable if the participant separated from service at normal retirement age, the disability benefit must first be actuarially reduced.

In support of their position, Plaintiffs rely principally on *Bellas v. CBS, Inc.*, 221 F.3d 517 (3d Cir. 2000), in which the court held that amendment of a plan providing a "permanent job separation" benefit in the event of a plant shutdown violated ERISA's anti-cutback provision. As in Myers's case, the pension benefit was not actuarially reduced even though participants were retiring early. The *Bellas* court noted that, for purposes of the anti-cutback rule, "accrued benefits" include "retirement-type subsid[ies]," 29 U.S.C. § 1054(g)(2)(A). It defined a "retirement-type subsidy" as "the excess in value of a benefit over the actuarial equivalent of the normal retirement benefit." *Bellas*, 221 F.3d at 525. The court concluded that the value of the plant shutdown benefit "over and above the actuarially reduced value" was a "retirement-type subsidy" subject to the anti-cutback provision. *Id.* at 538.

The problem is that *Bellas* did not involve a disability retirement benefit plan. The *Robinson* court distinguished *Bellas* on this basis. 441 F. Supp.2d at 423-24. Plaintiffs cite to no cases in which a disability benefit "over and above the actuarially reduced value" of the normal retirement benefit was found to be an

accrued benefit or a retirement-type subsidy subject to ERISA's non-forfeiture and anti-cutback provisions. This is not surprising.

As noted above, disability benefit plans are employee welfare benefit plans that fall outside the scope of those provisions, 29 U.S.C. § 1051(1), and the term "accrued benefits" typically refers only to pension or retirement benefits, not to disability benefits, 26 C.F.R. § 1.411(a)–7(a)(1)(ii). *See also* S.Rep. No. 98-575, 98th Cong., 2d Sess., at 30 (1984), reprinted in 1984 U.S.C.C.A.N. 2547, 2576 (noting, with respect to ERISA amendments, that the committee expects that "a qualified disability benefit . . . will not be considered a retirement-type subsidy"); *Williams v. Plumbers & Steamfitters Local 60 Pension Plan*, 48 F.3d 923, 925 (5th Cir. 1995) (noting that the legislative history makes it clear that the term "retirement-type subsidy" does not include disability benefits).

Two other cases are illustrative. In *Barncord v. San Francisco Culinary, Bartenders and Service Employees Pension Fund, Local 2*, 60 F. App'x 40, 41-42 (9th Cir. 2003), the court held that, because the disability benefits were not "accrued benefits," an amendment to a disability benefit plan did not violate ERISA's anti-cutback provision. In *Barncord*, as here, the monthly disability benefits were *equal to* the normal retirement benefits. The court noted that the term "qualified disability benefit" is a disability benefit that "does not exceed the benefit that would be provided" had the participated separated from service at normal retirement age. *Id.* at 41 (quoting 29 U.S.C. § 1002(22)). Nevertheless, in determining whether the disability benefit was an "accrued benefit," the court

did not consider the fact that the disability benefit was not actuarially reduced. It simply held:

> The disability pension is not in excess of the "qualified disability benefit" because, under section 4.07 of the Plan, the monthly amount of the disability pension is "determined in the same way as the monthly amount of the Normal Pension is determined." Thus, the disability pension benefits are "ancillary benefits not directly related to retirement benefits." They are not "accrued benefits."

Id. at 41. The court further held that the disability benefit was not a "retirement-type subsidy" because it did not "exceed" the normal retirement benefit. *Id.* at 41-42.

Likewise, in *Arndt v. Security Bank S.S.B. Employees' Pension Plan*, 182 F.3d 538 (7th Cir. 1999), the disability benefits were calculated as if the employee had continued to work until normal retirement age. The court rejected the employee's argument that this rendered the disability benefits akin to a retirement-type subsidy that was subject to ERISA's anti-cutback rule. *Id.* at 543. It further noted that under section 411(a)(9) of the Internal Revenue Code, setting out minimum vesting requirements for qualified pension plans, "a qualified disability benefit can be provided up to the maximum normal retirement benefit, and can commence either at the time of disability *(without actuarial reduction)* or at normal retirement age." *Id.* (quoting Treasury Decision 8360, 56 Federal Register 47524, 47531 (1991)) (emphasis added).

Based on these cases, the Court finds that even though the IPF's disability retirement benefits are not actuarially reduced, this fact does not transform them

into a "retirement-type subsidy" or any other kind of "accrued benefit" that is subject to ERISA's non-forfeiture or anti-cutback provisions. Nor does it transform them into a "normal retirement benefit" for purposes of the non-forfeiture provision. Moreover, even if the disability benefits were considered a "normal retirement benefit," the non-forfeiture provision applies only "upon the attainment of normal retirement age." 29 U.S.C. § 1053(a). Because Myers had not yet reached the "normal retirement age" when his disability benefits were suspended, the non-forfeiture provision is inapplicable. *See Chambless v. Masters, Mates & Pilots Pension Plan*, 571 F. Supp. 1430, 1441 (S.D.N.Y. 1983) ("The case law thus makes clear that section 203(a) provides no protection against the suspension of benefits of plan participants . . . who have not yet reached normal retirement age.").

Finally, Plaintiffs argue that the non-forfeiture provision applies because working in non-union employment is not included among the four "exemptions" to the forfeiture ban set forth in 29 U.S.C. § 1053(a)(3). Having determined that the IPF disability retirement benefit plan is not subject to ERISA's non-forfeiture provision, the Court need not address this argument.

The Court concludes that the alleged violations of ERISA's non-forfeiture and anti-cutback provisions are unsustainable as a matter of law. Plaintiffs have therefore failed to state a claim upon which relief can be granted.

4. Defendants' Other Arguments

Given that ERISA's non-forfeiture and anti-cutback provisions do not apply to the IPF's disability retirement benefit plan, the Court need not address the IPF Defendants' other arguments, including: (1) that the anti-cutback provision is inapplicable because the amendment at issue pre-dated Myers's participation in the Plan; (2) that Myers's willfully false statement on the IPF application for disability benefits constitutes an independent ground for suspending benefits; and (3) that Myers failed to exhaust his administrative remedies.

C. Breach of Fiduciary Duty Claims

Plaintiffs also allege that, in adopting and enforcing Article IV, § 4.09(e) of the Plan, the IPF Board of Trustees violated its fiduciary duty under ERISA and the LMRA.[4] These breach of fiduciary duty claims are derivative of the primary claims alleging violations of ERISA's non-forfeiture and anti-cutback provisions. Because the primary claims fail as a matter of law, the Board of Trustees cannot be found to have breached its fiduciary duty under either statute. *See Thornton*, 566 F.3d at 617 (affirming summary judgment on breach of fiduciary duty claim after finding

---

[4] ERISA requires fiduciaries to discharge their "duties with respect to a plan solely in the interest of the participants and beneficiaries and (A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries." 29 U.S.C. § 1104(A)(1)(a)(i). The LMRA requires disability insurance trust funds to be administered in a particular manner, "for the sole and exclusive benefit" of the employees and their families and dependents. 29 U.S.C. § 186(c)(5).

no violation of anti-cutback rule). The Court therefore finds that Plaintiffs have again failed to state a claim upon which relief can be granted.[5]

III. Conclusion

For the reasons set forth above, the Court SUSTAINS Defendants Bricklayers and Trowel Trades International Pension Fund and the Board of Trustees of the Bricklayers and Trowel Trades International Pension Fund's Motion to Dismiss the Amended Complaint. Doc. #24. Plaintiffs' claims against the Bricklayers and Masons Local 22 Pension Plan ("Local 22") and its Board of Trustees remain pending.

Counsel for Plaintiffs and the Local 22 Defendants will note that a telephone conference call will be commenced between Court and counsel, beginning at 8:30 a.m., Monday, December 9, 2013, for the purpose of determining further procedures to be followed in this case.

Date: November 25, 2013

WALTER H. RICE
UNITED STATES DISTRICT JUDGE

---

[5] Moreover, the Supreme Court has held that district courts have no authority to "issue injunctions against a trust fund or its trustees requiring the trust funds to be administered in the manner described in [29 U.S.C. § 186(c)(5).]" *Local 144 Nursing Home Pension Fund v. Demisay*, 508 U.S. 581, 587 (1993).