## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA EVANSVILLE DIVISION

DE'ANDREA L. SMITH,	)
Plaintiff,	)
v.	) 3:07-cv-52-WGH-RLY
ANTHEM LIFE INSURANCE COMPANY and ANTHEM LIFE INSURANCE COMPANIES, INC.,	) ) )
Defendants.	

## ORDER ON PETITION TO REMAND TO POSEY SUPERIOR COURT

This matter is before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, on the Petition to Remand to Posey Superior Court filed by Angel D. Hubner, surviving wife of Frederick W. Hubner, III, on June 18, 2007. (Docket No. 12). Anthem Life Insurance Company filed its response in opposition to the remand petition on June 19, 2007 (Docket No. 13), and a motion to strike the remand petition on June 27, 2007 (Docket No. 15). Plaintiff, De'Andrea L. Smith, filed her response in support of the remand petition on June 25, 2007. (Docket No. 14).

The Magistrate Judge, being duly advised, now **DENIES** the petition to remand.

<sup>&</sup>lt;sup>1</sup>The parties consented to Magistrate Judge jurisdiction in their Proposed Case Management Plan filed on July 23, 2007. (Docket No. 16). District Judge Richard L. Young issued an Order of Reference on July 25, 2007. (Docket No. 17).

The Complaint originally filed in the Posey Superior Court by De'Andrea L. Smith against Anthem Life Insurance Company alleges that she was the sole beneficiary to a certain life insurance policy on her son. She alleges that the defendant has failed to pay the proceeds of the life insurance policy to her.

The parties do not dispute that the decedent was a participant in an employee welfare benefit plan created pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, and that the plan was the source of the life insurance policy which is at issue in this case. Pursuant to 29 U.S.C. §§ 1132(a)(1) and (e), this court has been vested with original jurisdiction to determine the plaintiff's claim for benefits under the plan, and removal is therefore proper. The petition to remand is **DENIED.**<sup>2</sup>

## SO ORDERED.

**Dated:** August 14, 2007

WILLIAM G. HUSSMANN, JR. Magistrate Judge

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<sup>&</sup>lt;sup>2</sup>Because the court has denied the petition to remand, defendant's motion to strike (Docket No. 15) is deemed moot and is, therefore, **DENIED**.