

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MARY E. ORMOND, <i>et al.</i> ,	)	
On Behalf of Themselves and	)	
All Others Similarly Situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	1:05-cv-1908-TWP-TAB
	)	
ANTHEM, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**ORDER ON DEFENDANTS' MOTION TO STRIKE OR DEFER BRIEFING**

On May 15, 2011, Defendants moved to strike [Docket No. 422] Plaintiffs' motion for partial summary judgment [Docket No. 416] on the grounds that the motion is "improper, untimely, and inconsistent with the Court's procedures for filing dispositive motions." Alternatively, Defendants request that this Court defer briefing until the Court has ruled on Anthem's pending motion for summary judgment. [Docket No. 422.] In support of Defendants' motion to strike or defer, Defendants contend that Plaintiffs have moved on issues identical to those in Anthem's motion for summary judgment, and Plaintiffs filed their partial motion for summary judgment after expressly telling Anthem that they had no intention of doing so. [Docket No. 423 at 1–2.] For the reasons below, Defendants have not provided a sufficient basis for striking Plaintiffs' motion or deferring briefing.

Federal Rule of Civil Procedure 56(b) provides that "[u]nless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any

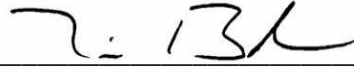
time until 30 days after the close of all discovery.” Absent an untimely motion for summary judgment, motions to strike or defer briefing are disfavored. *Crowder v. Foster Wheeler, LLC*, 265 F.R.D. 368, 370 (S.D. Ind. 2009).

Despite contending that Plaintiffs’ motion is improper, untimely, and inconsistent with Court rules, Defendants fail to identify any authority or Court rule that does not permit Plaintiffs to file a motion for partial summary judgment. Moreover, Defendants do not contend that Plaintiffs’ motion is inconsistent with the Case Management Plan, and Plaintiffs’ response brief extensively sets forth how Plaintiffs’ motion falls within the parameters of the CMP. [Docket No. 428 at 1–5.] Even if Plaintiffs represented that they would not file a cross motion for summary judgment, that is not a sufficient basis for striking Plaintiffs’ motion. A parties’ litigation position is continuously changing, especially as discovery proceeds, which may alter a litigants former position or strategy. In fact, Plaintiffs explain that while they “did not envision filing any cross-motions for summary judgment in December 2010, they never waived their right . . . to seek such relief.” [*Id.* at 5.] Accordingly, there is not a sufficient basis to strike Plaintiffs’ partial motion for summary judgment.

Additionally, this Court declines to defer briefing. Motions to strike are disfavored because they only serve to delay, and deferring briefing in this case would also serve to delay. *See Crowder*, 265 F.R.D. at 370. If Plaintiffs’ motion raises issues identical to those in Anthem’s motion for summary judgment, then the parties will have already briefed those issues and reduced efforts will be necessary to respond to Plaintiffs’ motion. Should additional briefing be necessary to respond to Plaintiffs’ motion, then the issues are not as identical as Defendants would have this Court believe.

Defendants' motion to strike Plaintiffs' motion for partial summary judgment, or in the alternative, to defer briefing pending a decision on Anthem's dispositive motion [Docket No. 422] is denied.

Dated: 08/25/2011

A handwritten signature in black ink, appearing to read "T. Baker", written above a horizontal line.

Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

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