

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**EARL E. OWENS AND
JOSEPH WAYNE ESPAT**

CIVIL ACTION

VERSUS

NO: 13-4782

**THE WESTERN & SOUTHERN LIFE
INSURANCE COMPANY AND
THE WESTERN & SOUTHERN LIFE
INSURANCE LONG TERM
INCENTIVE AND RETENTION PLAN**


SECTION: "S" (4)

ORDER AND REASONS

IT IS HEREBY ORDERED the Plaintiffs' Motion to Dismiss Defendants' Counterclaim (Doc. #41) is **DENIED** as premature.

On August 27, 2014, defendants, The Western & Southern Life Insurance Company and The Western & Southern Life Insurance Long Term Incentive and Retention Plan, filed a Motion for Leave to file a Counterclaim (Doc. #39). That motion is set for hearing before the United States Magistrate Judge on October 15, 2014. Because the defendants have not yet been granted leave to file the proposed counterclaim, there is no counterclaim to potentially dismiss on plaintiffs' motion. Plaintiffs' motion is more properly construed as an opposition to defendants' motion for leave to file their proposed counterclaim, and is forwarded to the United States Magistrate Judge for consideration.

New Orleans, Louisiana, this 29th day of September, 2014.


**MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE**