

Cotner v. Hartford Life and Annuity Ins. Co.
 N.D.Tex.,2008.

Only the Westlaw citation is currently available.
 United States District Court,N.D. Texas,Dallas
 Division.

Jerry B. COTNER, M.D., et al., Plaintiffs,
 v.

The HARTFORD LIFE AND ANNUITY
 INSURANCE COMPANY, et al., Defendants.
 Civil Action No. 3:07-CV-0487-G.

Jan. 4, 2008.

MEMORANDUM OPINION AND ORDER

A. JOE FISH, Senior District Judge.

*1 Before the court are the motions of the plaintiffs Jerry B. Cotner, M.D., Jerry B. Cotner, M.D., P.A., and Jerry B. Cotner, M.D., P.A. Defined Benefits Plan (collectively, "plaintiffs") (1) to remand this case to the state court from which it was previously removed and (2) for cost and attorney's fees. For the reasons set forth below, the motions are granted.

I. BACKGROUND

This case arises from the solicitation, promotion, marketing, and sales by the defendant Hartford Life and Annuity Insurance Company and its agents (collectively, "Hartford") of a packaged retirement investment product designed to provide significant tax benefits to its participants. The plaintiffs allege that this product consisted of a defined pension benefit plan funded by Hartford life insurance policies ("Retirement Product") that was ostensibly in compliance with Section 412(i) of the Internal Revenue Code. First Amended Complaint ¶ 16 ("Complaint"). The plaintiffs further allege that the Retirement Product was specifically marketed and promoted to medical professionals because of their high-net worth. *Id.*

In early 2003, Hartford's agents began a series of meetings with the plaintiffs to discuss their purchase of the Retirement Product. *Id.* ¶ 17. The plaintiffs allege that Hartford represented that the Retirement Product would provide various retirement benefits to Jerry B. Cotner, M.D. and to employees and beneficiaries of Jerry B. Cotner, M.D., P.A., as well as significant federal income tax deductions for Jerry

B. Cotner, M.D., P.A. *Id.* ¶ 18. The plaintiffs maintain that they relied on these representations when they purchased the Retirement Product from Hartford in April 2003. *Id.* ¶ 19. The plaintiffs paid approximately \$700,000 in insurance premiums to Hartford, and also claimed approximately \$700,000 in federal income tax deductions related to those premiums. *Id.* ¶ 20.

In February 2004, the Internal Revenue Service ("IRS") issued Revenue Ruling 2004-20 which the plaintiffs claim-prohibited the issuance of life insurance policies that greatly exceeded the permissible death benefits in defined benefit plans because that indicated a plan was an abusive tax shelter. *Id.* ¶ 23. The IRS also ruled that a defined benefit plan holding such policies could not qualify as a Section 412(i) plan. *Id.* The plaintiffs allege that Hartford recommended a "wait and see approach," as opposed to immediate action, because Hartford felt the Revenue Ruling might not affect the plaintiffs. *Id.* ¶ 24. The plaintiffs aver that in reliance on that representation, they paid more than \$300,000 in additional premiums. *Id.* In early 2006, the plaintiffs received notice that the IRS would conduct an audit of the Cotner Defined Benefit Plan ("Cotner DBP"). *Id.* ¶ 25.

On February 12, 2007, the plaintiffs filed this suit against Hartford in the 134th Judicial District Court of Dallas County, Texas. *See* Plaintiffs' Original Petition and Request for Disclosure ("Petition"), attached to Hartford Life and Annuity Insurance Company's Notice of Removal ("Notice of Removal") as Exhibit A. The plaintiffs alleged the following state law claims against Hartford: (1) violations of TEX. BUS. & COM.CODE ANN. §§ 17.46 & 17.50 ("Texas Deceptive Trade Practices Act"); ^{FNI} (2) civil conspiracy to commit violations of the Texas Deceptive Trade Practices Act; (3) aiding and abetting violations of the Texas Deceptive Trade Practices Act; (4) violations of Tex. Ins.Code Ann. §§ 541.003, 541.051, 541.052 and 541.061 ("Chapter 541"); (5) civil conspiracy to commit violations of Chapter 541; (6) aiding and/or abetting violations of Chapter 541; (7) common law fraud; (8) civil conspiracy to commit fraud; (9) negligent misrepresentation; and (10) rescission. *Id.* ¶¶ 27-89.

