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**NOT FOR PUBLICATION**

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Evanston Insurance Company,

) No. CV-08-1632-PHX-FJM

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Plaintiff,

) **ORDER**

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vs.

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Hearthstone of Sun City, LLC; et al.,

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Defendants.

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The court has before it plaintiff Evanston Insurance Company’s (“Evanston”) motion for summary judgment (doc. 20), defendants Hearthstone of Sun City, LLC (“Hearthstone”), HSP Property, LLC, Unispec Facilities Management, LLC, and Pamela and John Doe Tyler’s (collectively “Hearthstone defendants”) response (doc. 28), the Ernico defendants’ Rule 56(f) affidavit in response to the motion (doc. 27), and Evanston’s reply (doc. 48). We also have before us the Hearthstone defendants’ motion for Rule 56(f) relief (doc. 32), the Ernico defendants’ motion for Rule 56(f) relief (doc. 31), Evanston’s response (doc. 49), the Hearthstone defendants’ reply (doc. 58), and the Ernico defendants’ joinder in the reply (doc. 59).

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Evanston filed this declaratory judgment action seeking a declaration that it has no duty to defend or indemnify the Hearthstone defendants under its professional and general liability insurance policy, with respect to a state court action filed against them by the Ernico

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1 defendants (the “Ernico litigation”). Evanston issued a claims made policy effective January  
2 30, 2006 to January 30, 2007 (the “policy”), and provided coverage only for “those claims  
3 that are first made against the insured during the policy period.” PSOF, exhibit A at 1. On  
4 January 29, 2007, one day before the policy was to expire, Hearthstone sent Evanston a  
5 “claim log” containing 112 “claims or possible claims,” including a notation for Henry  
6 Ernico—“Unavoidable wound progression, son is an attorney, he has requested form to  
7 obtain medical records. Have not rec’d formal request to date.” DSOF, exhibit B. Evanston  
8 contends that this was insufficient notice of a claim. The Ernico defendants filed a lawsuit  
9 against the Hearthstone defendants on November 9, 2007, well after the policy expired,  
10 asserting claims of negligence, wrongful death, and vulnerable adult abuse and neglect under  
11 the Adult Protective Services Act, A.R.S. §§ 46-454 and 455.

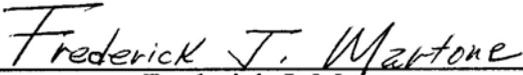
12 Evanston now moves for summary judgment contending that there is no coverage  
13 under the policy because no claim was made during the policy period. The defendants ask  
14 us to deny the motion for summary judgment under Rule 56(f), Fed. R. Civ. P., asserting that  
15 they need additional time to conduct discovery on issues such as (a) whether Evanston  
16 received adequate notice of the Ernico claim during the coverage period, and (b) whether  
17 Evanston’s prior course of conduct created a reasonable expectation of coverage.  
18 Specifically, the Hearthstone defendants contend that Evanston has a prior established  
19 practice of accepting “claims logs” as sufficient notice of claims.

20 The current undeveloped state of the evidence impairs our ability to analyze and  
21 resolve Evanston’s motion for summary judgment. We agree that additional discovery will  
22 be useful in clarifying the outstanding issues. Therefore, we deny Evanston’s motion for  
23 summary judgment pursuant to Rule 56(f), Fed. R. Civ. P., without prejudice to Evanston’s  
24 right to file another motion for summary judgment once discovery is further developed.

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**IT IS ORDERED DENYING** Evanston’s motion for summary judgment (doc. 20),  
and **GRANTING** the Hearthstone defendants’ motion for Rule 56(f) relief (doc. 32), and  
**GRANTING** the Ernico defendants’ motion for Rule 56(f) relief (doc. 31).

DATED this 3<sup>rd</sup> day of April, 2009.

  
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Frederick J. Martone  
United States District Judge