

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NAVIGATORS SPECIALTY INSURANCE)	Case No. 13-cv-03499-SC
COMPANY,)	
)	ORDER GRANTING RULE 56(D)
Plaintiff,)	<u>REQUEST</u>
)	
v.)	
)	
ST. PAUL SURPLUS LINES INSURANCE)	
COMPANY; LIBERTY SURPLUS)	
INSURANCE CORPORATION; et al.,)	
)	
Defendants.)	
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)	

Now before the Court is Defendants St. Paul Surplus Lines Insurance Company ("St. Paul") and Travelers Property Casualty Company of America's ("Travelers") motion for summary judgment. ECF No. 69. Plaintiff Navigators Specialty Insurance Company's ("Navigators") theory of St. Paul's liability hinges on the status of St. Paul's insurance broker, California Financial, as St. Paul's agent. In its opposition, Navigators requests the Court deny or continue the summary judgment motion pending additional discovery regarding California Financial's status as St. Paul's agent. For the reasons set forth below, the Court GRANTS Navigators' Rule

1 56(d) request.

2 Federal Rule of Civil Procedure 56(d) permits the Court to
3 postpone ruling on a motion for summary judgment "[i]f a nonmovant
4 shows by affidavit or declaration that, for specified reasons, it
5 cannot present facts essential to justify its opposition." To
6 prevail under this Rule, a party opposing a motion for summary
7 judgment must make "(a) a timely application which (b) specifically
8 identifies (c) relevant information, (d) where there is some basis
9 for believing that the information sought actually exists." Emp'rs
10 Teamsters Local Nos. 175 & 505 Pension Tr. Fund v. Clorox Co., 353
11 F.3d 1125, 1129-30 (9th Cir. 2004). "The burden is on the party
12 seeking additional discovery to proffer sufficient facts to show
13 that the evidence sought exists, and that it would prevent summary
14 judgment." Chance v. Pac-Tel Teletrac Inc., 242 F.3d 1151, 1161
15 n.6 (9th Cir. 2001).

16 Navigators has submitted an affidavit explaining the need for
17 additional discovery. See ECF No. 79-3 ("Silberstein Decl.").
18 Navigators seeks to depose the employee of St. Paul's California
19 underwriter who allegedly informed St. Paul that it should contact
20 California Financial to determine whether California financial had
21 authority to add an additional insured to the policies issued by
22 St. Paul. Id. ¶ 8. Navigators also seeks the production of
23 documents from California Financial. Id. ¶ 9.

24 St. Paul argues in response that no further discovery is
25 necessary for several reasons. First, St. Paul argues that this
26 motion comes relatively late in the litigation process (a year and
27 a half after the case was filed), and that Navigators has already
28 had the opportunity to conduct discovery. St. Paul also argues

1 that the employee Navigators hopes to depose has been known to
2 Navigators for some time. While it may be true that Navigators has
3 already conducted discovery in this matter, Navigators moved
4 expeditiously to conduct the necessary additional discovery once
5 this motion was filed. Indeed, the Court only recently set the
6 discovery cutoff date in this case. See ECF No. 85. St. Paul also
7 argues that Navigators' request for production will not result in
8 the production of any new documents, because when service of the
9 subpoena to California Financial was attempted, the process server
10 was informed that California Financial is no longer in business.
11 See ECF No. 80 ("Reply") at 4-5. This argument, too, is
12 unpersuasive.¹ Merely because Navigators' first attempt to serve
13 the subpoena was unsuccessful does not necessarily mean that
14 Navigators will never be able to locate California Financial's
15 documents.

16 The Court finds that Navigators has met the burden required to
17 support its Rule 56(d) request. If California Financial acted as
18 St. Paul's agent (or as the agent of St. Paul's underwriter), there
19 is a reasonable basis to believe that California Financial's
20 documents might reflect that status and that the employee
21 Navigators identified might have supporting evidence. The Court
22 will permit Navigators to conduct additional discovery into this
23 issue before ruling on the summary judgment motion.

24 For the reasons set forth above, Navigators' Rule 56(d)

25 ¹ Navigators has objected to St. Paul's submission of the
26 declaration of non-service of subpoena from the process server who
27 attempted to contact California Financial. The Court would grant
28 Navigators' Rule 56(d) request even if it were to consider the
server's statement, so the Court finds it unnecessary to rule on
the evidentiary issue.

1 request is GRANTED, and the Court will defer ruling on the motion
2 for summary judgment until additional discovery can be taken.
3 According to the parties' filings, California Financial's documents
4 were supposed to be produced on December 22, 2014, and the
5 depositions relevant to this motion were set for February 12, 2015
6 and February 17, 2015. See ECF Nos. 79 at 21-22, 83 at 2. Within
7 ten (10) days of the signature date of this Order, the parties
8 shall meet and confer and submit to the Court a joint status update
9 of no more than five (5) pages explaining (1) whether the
10 additional discovery is indeed complete (and if not, how long it is
11 expected take); and (2) whether Navigators believes the discovery
12 uncovered additional facts essential to its opposition to the
13 motion for summary judgment. If the additional discovery is
14 complete but did not reveal additional relevant information, the
15 Court will rule on the motion as submitted. If the additional
16 discovery did reveal additional relevant information, the Court
17 will set a schedule for the submission of revised opposition and
18 reply briefs.

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IT IS SO ORDERED.

Dated: February 24, 2015


UNITED STATES DISTRICT JUDGE