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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAMELA STONEBREAKER,
Plaintiff,

vs.

KRISTIN STONEBREAKER, a minor;
KELLI STONEBREAKER, a minor;
RYAN STONEBREAKER, a minor;
GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA, a
corporation; WESTERN RESERVE LIFE
INSURANCE COMPANY OF OHIO, a
corporation; UNION SECURITY
INSURANCE COMPANY, a corporation;
DOES 1-100, inclusive.

Defendants.

WESTERN RESERVE LIFE
INSURANCE COMPANY OF OHIO, a
corporation,

Third-party Plaintiff,

vs.

PATRICIA YIM COWETT, Guardian Ad
Litem for minor children Kristin
Stonebreaker, Kelli Stonebreaker, and
Ryan Stonebreaker; ROE ONE, as
executor of the Estate of Robert
Stonebreaker; ROES 2-10, inclusive;

Third-party Defendants.

CASE NO. 11cv797 WQH (WVG)

ORDER

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WESTERN RESERVE LIFE
INSURANCE COMPANY OF OHIO, a
corporation

Counterclaimant,

vs.

PAMELA STONEBREAKER, an
individual.

Counterdefendant.

UNION SECURITY INSURANCE
COMPANY, a corporation

Counterclaimant,

vs.

PAMELA STONEBREAKER, an
individual.

Counterdefendant.

UNION SECURITY INSURANCE
COMPANY, a corporation

Cross-Claimant,

vs.

KRISTIN STONEBREAKER, a minor;
KELLI STONEBREAKER, a minor;
RYAN STONEBREAKER, a minor,

Cross-Defendant.

GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA, a
corporation,

Cross-Claimant,

vs.

KRISTIN STONEBREAKER, a minor;
KELLI STONEBREAKER, a minor;
RYAN STONEBREAKER, a minor,

Cross-Defendants.

1 HAYES, Judge:

2 The matters before the Court are the Ex Parte Motion for an Order for Continuance of
3 the Motion for Summary Judgment Pending Discovery filed by Defendant Union Security
4 Insurance Company (ECF No. 46); the Ex Parte Motion to Reschedule the Motion for Summary
5 Judgment (ECF No. 78) filed by Plaintiff; the Ex Parte Motion to Stay the Motion for Summary
6 Judgment and Motion for Judgment in Interpleader (ECF No. 92) filed by Plaintiff; and the
7 Amended Ex Parte Motion to Continue Hearing and Stay (ECF No. 129) filed by Western
8 Reserve.

9 **I. Background**

10 On April 15, 2011, Defendants removed the Complaint filed by Pamela Stonebreaker in
11 the Superior Court of California for the County of San Diego. Plaintiff alleges that she was
12 married to Dr. Robert Stonebreaker who purchased the following life insurance policies: (1)
13 three policies from Defendant Guardian Life Insurance Company (“Guardian”) totaling
14 \$2,000,000.00; (2) one policy from Defendant Western Reserve Life Insurance Company of
15 Ohio (“Western Reserve”) in the amount of \$250,000.00; (3) one policy from Defendant Union
16 Security Insurance Company (“Union Security”) in the amount of \$525,000.00. Plaintiff
17 alleges that Dr. Stonebreaker died on January 16, 2010; however, Defendants have failed to pay
18 the life insurance benefits to Plaintiff Stonebreaker, the primary beneficiary. Plaintiff asserts
19 a claim for breach of contract and a claim for breach of the implied covenant of good faith and
20 fair dealing against each Defendant.

21 On April 21, 2011, Defendant Western Reserve filed a Counterclaim and Third-party
22 Complaint in Interpleader against Plaintiff Pamela Stonebreaker. Western Reserve alleges that
23 Dr. Stonebreaker’s death was determined to be a homicide and Plaintiff, the beneficiary of the
24 life insurance policy, was a suspect. Western Reserve alleges that Plaintiff would be
25 prohibited from recovering the proceeds of the life insurance policy if she is found to have
26 caused her husband’s death and the proceeds would instead be distributed to the estate of Dr.
27 Stonebreaker. Western Reserve alleges that although it admits the proceeds of the life
28 insurance policy is due and owing, payment of the proceeds may subject it to the risk of

1 multiple claims.

2 On April 22, 2011, Defendant Union Security filed a Counterclaim in Interpleader.
3 Union Security alleges that Plaintiff is the primary beneficiary of the policies and the
4 Stonebreaker's minor children are the secondary beneficiaries. Union Security alleges that it
5 is willing and able to pay the proceeds of the life insurance policy, but it cannot determine who
6 is the proper beneficiary.

7 On April 22, 2011, Guardian filed a Counterclaim for Interpleader against Plaintiff
8 Stonebreaker and filed a Cross-claim against Kristin Stonebreaker, Kelli Stonebreaker, and
9 Ryan Stonebreaker. Guardian alleges that Plaintiff is the primary beneficiary of the policies
10 and the Stonebreaker's minor children are the secondary beneficiaries. Guardian alleges that
11 it is willing and able to pay the proceeds of the life insurance policy, but it cannot determine
12 who is the proper beneficiary.

13 On June 10, 2011, Plaintiff filed a Motion for Summary Judgment. Plaintiff seeks
14 summary judgment on the breach of contract claim for Defendants' failure to pay her the life
15 insurance proceeds on the grounds that "(i) it is undisputed that [Dr. Stonebreaker] has died
16 and (ii) there is no evidence – let alone a preponderance of the evidence – to support the
17 Defendants' allegation that [Plaintiff] killed her husband." (ECF No. 37-1 at 17). Plaintiff
18 contends: "To oppose this motion, the Defendants must produce more than suspicion and
19 speculation. They must produce evidence to support their accusation that [Plaintiff] killed her
20 husband. The Defendants will not be able to do so because it simply is not true." *Id.* at 21.

21 On June 23, 2011, Union Security filed an Ex Parte Motion for an Order for
22 Continuance of the Motion for Summary Judgment Pending Discovery pursuant to Federal
23 Rule of Civil Procedure 56(d). Union Security contends that "written discovery has only just
24 begun. Much of this discovery is within Ms. Stonebreaker's sole control, and depositions
25 cannot meaningfully proceed until the secondary beneficiaries are represented by counsel and
26 have appeared in this action." (ECF No. 46 at 2). Union Security contends: "Given Ms.
27 Stonebreaker's contention that the Insurers [have] no reason to believe she was a suspect in
28 her husband's murder and that she [is] in fact innocent, at a minimum the Insurers are entitled

1 to take depositions of the San Diego Sheriffs office, the coroner, and Ms. Stonebreaker herself
2 ...” *Id.* at 5. Defendant Union Security has submitted the Declaration of Alexander Potente
3 stating that the minor children had “not yet been appointed counsel or appeared in this action.”
4 (ECF No. 46-2 at 2). Potente states that Union Security intends to depose Plaintiff
5 Stonebreaker, the coroner, and the San Diego Sheriff’s officer investigating the case.

6 On June 23, 2011, Defendant Guardian filed a Joinder in Defendant Union Security’s
7 Ex Parte Motion for an Order for Continuance of the Motion for Summary Judgment pending
8 discovery pursuant to Federal Rule of Civil Procedure 56(d). (ECF No. 45). On June 23,
9 2011, Defendant Western Reserve filed a Non-Opposition to the Ex Parte Motion for an Order
10 for Continuance of the Motion for Summary Judgment Pending Discovery pursuant to Federal
11 Rule of Civil Procedure 56(d). (ECF No. 47).

12 On June 24, 2011, Plaintiff filed an Opposition to the Ex Parte Motion for an Order for
13 Continuance of the Motion for Summary Judgment pending discovery pursuant to Federal Rule
14 of Civil Procedure 56(d). (ECF No. 54). Plaintiff contends that Defendant could have
15 interviewed Plaintiff Stonebreaker or “talked with the Sheriff’s office” after she filed her claim
16 seeking the life insurance benefits. *Id.* at 7. Plaintiff contends that Defendants “admit that
17 they don’t know whether there is any evidence that would preclude summary judgment.” *Id.*
18 at 6.

19 On June 26, 2011, Union Security filed a Reply. (ECF No. 55).

20 On June 29, 2011, this Court issued an order staying the briefing on Plaintiff’s Motion
21 for Summary Judgment pending a ruling on the Ex Parte Motion.

22 On July 11, 2011, a guardian ad litem was appointed to represent the minor children in
23 this case.

24 On August 23, 2011, Plaintiff filed an Ex Parte Motion to Reschedule the Motion for
25 Summary Judgment on the grounds that Defendant had not yet taken the deposition of Plaintiff
26 Stonebreaker and Defendants responded to interrogatories stating that they did not know
27 whether Plaintiff Stonebreaker killed her husband. On August 23, 2011, Defendant Guardian
28 filed an Opposition on the grounds that Plaintiff’s deposition was scheduled for August 31,

1 2011, to accommodate the recently appointed guardian ad litem for the minor children.
2 Defendant Union Security also filed an Opposition. Plaintiff filed Replies.

3 On August 29, 2011, Western Reserve filed a Motion for Judgment in Interpleader. On
4 August 29, 2011, Western Reserve filed a Motion for Summary Judgment. On September 2,
5 2011, Plaintiff filed an Ex Parte Motion to Stay the Motion for Summary Judgment and Motion
6 for Judgment in Interpleader pursuant to Federal Rule of Civil Procedure 56(d). Plaintiff has
7 submitted the Declaration of Joseph Foss who states that Plaintiff “cannot produce the
8 evidence she needs to establish that there are triable issues of fact regarding whether Western
9 Reserve breached the insurance contract and implied covenant of good faith and fair dealing
10 by failing to adequately investigate Plaintiff’s claim, undertaking a biased investigation,
11 improperly refusing to pay Plaintiff, and improperly filing an interpleader action[]” until
12 Plaintiff deposes the persons most knowledgeable at Western Reserve. (ECF No. 92-2 at 3).
13 Western Reserve filed an Opposition. Plaintiff filed a Reply.

14 On August 31, 2011, the Magistrate Judge conducted an Early Neutral Evaluation
15 Conference in this case. On September 6, 2011, the Magistrate Judge held a Case Management
16 Conference and issued an Order Regulating Discovery and Other Pretrial Proceedings. (ECF
17 No. 97).

18 On September 14, 2011, this Court issued an order staying the briefing on Western
19 Reserves’s Motion for Summary Judgment and Judgment in Interpleader pending a ruling on
20 the Ex Parte Motion.

21 On October 4, 2011, Plaintiff filed a Motion for Summary Judgment on Defendant
22 Guardian’s Counterclaim and Cross-Claim for Interpleader; a Motion for Summary Judgment
23 on Defendant Western Reserve’s Counterclaim and Third-Party Complaint for Interpleader;
24 and a Motion for Summary Judgment on Defendant Union Security’s Counterclaim and Cross-
25 claim in Interpleader. (ECF No. 116-18). On October 5, 2011, Defendant Union Security filed
26 a First Amended Cross-claim in Interpleader. On October 7, 2011, Plaintiff filed a Motion for
27 Summary Judgment on Defendant Union Security’s First Amended Cross-claim in
28 Interpleader. (ECF No. 122).

1 On October 12, 2011, Defendant Western Reserve filed an Ex Parte Application to
2 Continue Hearing and Stay Briefing on Plaintiff's Motions for Summary Judgment. On
3 October 19, 2011, this Court issued an order staying the briefing on Plaintiff's Motion for
4 Summary Judgment pending a ruling on the Ex Parte Motion.

5 **II. Discussion**

6 Pursuant to Federal Rule of Civil Procedure 56(d), regarding motions for summary
7 judgment, provides: "If a nonmovant shows by affidavit or declaration that, for specified
8 reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer
9 considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take
10 discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d). The Rule
11 "provides a device for litigants to avoid summary judgment when they have not had sufficient
12 time to develop affirmative evidence." *United States v. Kitsap Physicians Serv.*, 314 F.3d 995,
13 1000 (9th Cir. 2002). A Rule 56(d) "continuance of a motion for summary judgment for
14 purposes of conducting discovery should be granted almost as a matter of course unless the
15 non-moving party has not diligently pursued discovery of evidence." *Burlington N. Santa Fe*
16 *R.R. Co. v. The Assiniboine and Souix Tribes of the Ft. Peck Reservation*, 323 F.3d 767, 773-
17 74 (9th Cir. 2003) (citing *Wichita Falls Assoc. v. Banc One Corp.* 978 F.2d 915, 919 n.4 (5th
18 Cir. 1992)).

19 In this case, the Court has stayed briefing on Plaintiff's Motion for Partial Summary
20 Judgment on Plaintiff's claim of breach of contract; Western Reserve's Motion for Judgment
21 in Interpleader and Motion for Summary Judgment; Plaintiff's Motion for Summary Judgment
22 on Defendant Guardian's Counterclaim and Cross-claim, Defendant Western Reserve's
23 Counterclaim and Cross-claim, and Defendant Union Securities Counterclaim and Cross-claim.
24 The parties have had additional time to obtain affidavits or declarations or to take discovery.
25 Accordingly, the stays are lifted.


26 **III. Conclusion**

27 The Ex Parte Motion for an Order for Continuance of the Motion for Summary
28 Judgment Pending Discovery filed by Defendant Union Security Insurance Company (ECF

1 No. 46); the Ex Parte Motion to Reschedule the Motion for Summary Judgment (ECF No. 78)
2 filed by Plaintiff; the Ex Parte Motion to Stay the Motion for Summary Judgment and Motion
3 for Judgment in Interpleader (ECF No. 92) filed by Plaintiff; and the Amended Ex Parte
4 Motion to Continue Hearing and Stay (ECF No. 129) filed by Western Reserve are DENIED.
5

6 Any opposition to Plaintiff's Motion for Partial Summary Judgment on Plaintiff claim
7 of breach of contract (ECF No. 37); Western Reserve's Motion for Judgment in Interpleader
8 (ECF No. 88) and Motion for Summary Judgment (ECF No. 89); Plaintiff's Motion for
9 Summary Judgment on Defendant Guardian's Counterclaim and Cross-claim (ECF No. 116),
10 Defendant Western Reserve's Counterclaim and Cross-claim (ECF No. 117), and Defendant
11 Union Securities Counterclaim and Cross-claim (ECF Nos. 118, 122) shall be filed no more
12 than twenty-one days from the date of this Order. If any party is not able to present facts
13 essential to justify its opposition, the party may show by affidavit or declaration the specific
14 reasons why it cannot pursuant to Federal Rule of Civil Procedure 56(d). Any reply must be
15 filed no later than fourteen days after the date that the opposition was filed.

16 DATED: November 4, 2011

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18 **WILLIAM Q. HAYES**
19 United States District Judge
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