

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CHRISTOPHER A. SPHAR and
HEATHER N. SPHAR,

Plaintiffs,

v.

Case No: 6:16-cv-2221-Orl-40TBS

AMICA MUTUAL INSURANCE
COMPANY,

Defendant.

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ORDER

This cause comes before the Court on Plaintiffs' Motion for Partial Summary Judgment (Doc. 23), filed August 31, 2017, and Defendant's Response in Opposition (Doc. 28), filed September 12, 2017. The parties have completed their briefing and the Court is otherwise fully advised on the premises. Upon consideration, the Court denies without prejudice Plaintiffs' motion as premature.

I. BACKGROUND

This case stems from an October 27, 2014, automobile accident involving Christopher Sphar, Plaintiff, and an allegedly uninsured motorist, Royslan Hernandez-Macias. (Doc. 2, ¶¶ 4, 6, 12). At the time of the accident, Plaintiff was covered by an insurance policy issued by Defendant, Amica Mutual Insurance Company ("Amica"). (*Id.* ¶ 7). Plaintiff and his wife thereafter brought this suit in state court on November 11, 2016, against Amica pursuant to uninsured motorist coverage allegedly supplied by the Amica policy. (*Id.*). On December 27, 2016, Amica removed the case to this Court. (Doc. 1).

On December 28, 2016, Amica filed its Answer and Affirmative Defenses, which contained affirmative defenses alleging comparative negligence and failure to wear a seatbelt, and alleging entitlement to set-offs for amounts recoverable against the tortfeasor. (Doc. 23-1, pp. 3–5). Plaintiffs move for partial summary judgment on these affirmative defenses, citing Christopher Sphar’s testimony, which is purportedly “the only record evidence concerning” these defenses. (Doc. 23). Amica urges the Court to deny Plaintiffs’ motion, or defer ruling on it, until Ms. Hernandez-Macias can be deposed and Amica’s expert reports are disclosed. (Doc. 28). In support, Amica notes that Ms. Hernandez-Macias has twice failed to attend depositions, flaunting both a deposition notice and subpoena. (Doc. 28, pp. 2–3). On September 13, 2017, this Court ordered Ms. Hernandez-Macias to attend her deposition under threat of sanctions for failure to attend a third time. (Doc. 29). With respect to the expert reports, Amica notes that expert reports were not due to be disclosed until December 1, 2017, and that it could use its expert report to opine whether Plaintiff was wearing a seatbelt. (Doc. 28).

II. DISCUSSION

Before granting summary judgment, the party opposing summary judgment must be afforded an “adequate opportunity” to conduct discovery. *Carter v. HSBC Mortg. Servs., Inc.*, 680 F. App’x 890, 892 (11th Cir. 2017) (quoting *Snook v. Tr. Co. of Ga. Bank of Savannah*, 859 F.2d 865, 870 (11th Cir. 1988)). Rule 56(d) authorizes district courts to deny, defer, or otherwise delay ruling on summary judgment motions where the “nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition” Fed. R. Civ. P. 56(d). However, the “nonmovant may not simply rely on vague assertions that additional discovery will

produce needed, but unspecified, facts, but rather he must specifically demonstrate how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact." *Wallace v. Brownell Pontiac-GMC Co.*, 703 F.2d 525, 527 (11th Cir. 1983) (internal quotation marks omitted). "Generally summary judgment is inappropriate when the party opposing the motion has been unable to obtain responses to his discovery requests." *Snook*, 859 F.2d at 870.

Here, Amica argues that the Court should allow it to depose Ms. Hernandez-Macias, the nonparty tortfeasor in this case, who Amica anticipates will provide testimony concerning the disputed affirmative defenses. The record discloses Amica's fruitless attempts to depose a critical fact witness, culminating with an Order by this Court requiring Ms. Hernandez-Macias to submit to a deposition. According to the Case Management and Scheduling Order ("CMSO"), the discovery deadline in this case is January 2, 2018, meaning time remains for the parties to discover facts that may bear on Plaintiffs' motion. Finally, Amica has explained how its expert's report would provide another potential source of facts to rebut Plaintiff's summary judgment motion.

The Court therefore finds that Amica has adequately demonstrated how deferring a ruling on Plaintiffs' Motion for Partial Summary Judgment might enable Amica to prove genuine disputes of material fact.

It is therefore **ORDERED AND ADJUDGED** that Plaintiffs' Motion for Partial Summary Judgment (Doc. 23) is denied without prejudice as premature. As provided in the CMSO, the parties have until February 1, 2017, to file motions for summary judgment.

DONE AND ORDERED in Orlando, Florida on December 15, 2017.



PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties