

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

GRANITE STATE INSURANCE	)	
COMPANY and NEW HAMPSHIRE	)	
INSURANCE COMPANY,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CAUSE NO. 3:11-CV-432
	)	
PULLIAM ENTERPRISES, INC.,	)	
And ROBERT LODHOLTZ,	)	
	)	
Defendants.	)	

**OPINION AND ORDER**

This matter is before the Court on "Granite State Insurance Company and New Hampshire Insurance Company's Motion for Relief Under Federal Rule 56(d) Regarding Defendants' Motions for Partial Summary Judgment," filed by Granite State Insurance Company ("Granite State") and New Hampshire Insurance Company ("NHIC"), on October 30, 2015 (DE #313).

**BACKGROUND**

Granite State and NHIC request relief under Rule 56(d) of the Federal Rules of Civil Procedure regarding the pending motions for partial summary judgment filed by Pulliam Enterprise, Inc. ("Pulliam") and Robert Lodholtz ("Lodholtz"). (DE ##298, 303.)

**DISCUSSION**

Federal Rule of Civil Procedure 56(d) provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d). Rule 56(d) "authorizes a district court to refuse to grant a motion for summary judgment or to continue its ruling on such a motion pending further discovery if the nonmovant submits an affidavit demonstrating why it cannot yet present facts sufficient to justify its opposition to the motion." *Woods v. City of Chicago*, 234 F.3d 979, 990 (7th Cir. 2000). The affidavit must outline the reasons for needing further discovery. *Id.* at 990; see also *Deere & Co., v. Ohio Gear*, 462 F.3d 701, 706 (7th Cir. 2006).

Here, Granite State and NHIC did file an affidavit of Phillip K. Beth, co-counsel in this case, detailing the background of the case, the stays, the infancy of discovery, and most importantly, specifically outlining the need for additional discovery (and several depositions which have been noticed, but not scheduled yet), to respond to the motions for summary judgment. (DE #315.) This Court previously granted a similar order in response to Pulliam and Lodholtz's motion for relief under Rule 56(d). (DE #243).

In response, Pulliam and Lodholtz argue that Granite State and

NHIC have not identified an issue of material fact for which they need more discovery. (DE #324, at 2.) Granite State and NHIC filed a reply on November 27, 2015, contending they have "identified countless factual issues on which such discovery is needed." (DE #332, at 1.)

Here, the Court finds that Granite State and NHIC have satisfied the requirements under Rule 56(d). Discovery is incomplete at this stage, the opposing party does not have sufficient facts to oppose the pending motions, and it would be inappropriate to rule on these motions for summary judgment at this time.

#### **CONCLUSION**

Consequently, it is **HEREBY ORDERED**:

(1) Granite State Insurance Company and New Hampshire Insurance Company's Motion for Relief Under Federal Rule 56(d) Regarding Defendants' Motions for Partial Summary Judgment (DE #313) is **GRANTED**;

(2) Pulliam Enterprises, Inc., and Robert Lodholtz's Motion for Partial Summary Judgment Against Granite State Insurance Company (DE #298) is **DENIED WITH LEAVE TO REFILE** following completion of the relevant discovery;

(3) Pulliam Enterprises, Inc., and Robert Lodholtz's Motion for Partial Summary Judgment Against New Hampshire Insurance

Company (DE #303) is **DENIED WITH LEAVE TO REFILE** following completion of the relevant discovery.

**DATED: December 8, 2015**

**/s/ RUDY LOZANO, Judge  
United States District Court**