

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

C.J. MAHAN CONSTRUCTION  
COMPANY, LLC,

Plaintiff,

vs.

Civil Action 2:14-cv-664  
Judge Marbley  
Magistrate Judge King

THE CONTINENTAL INSURANCE COMPANY,  
*et al.*,

Defendants.

OPINION AND ORDER

This is an action for breach of insurance policies issued by defendants The Continental Insurance Company and Charter Oak Fire Insurance Company in connection with the sinking of a crane barge used by plaintiff on a construction project. Plaintiff seeks recovery of the expenses associated with its removal of the barge. Plaintiff also asserts a claim of negligence against defendant MJ Insurance, Inc., plaintiff's insurance broker, in connection with the broker's advice and recommendations relating to plaintiff's purchase of the inland marine policies. Defendant Continental asserts a cross claim against defendant Charter Oak for unjust enrichment in connection with amounts allegedly paid by Continental to plaintiff.

The *Preliminary Pretrial Order*, ECF 20, required, *inter alia*, that discovery be completed by October 1, 2015, and that motions for summary judgment be filed by December 15, 2015. Plaintiff filed a motion for partial summary judgment, ECF 27, on December 8, 2014, seeking a declaratory judgment for insurance coverage for wreck

removal and crane recovery expenses. By local and civil rule, see S.D. Ohio Civ. R. 7.2(a)(2); Fed. R. Civ. P. 6(d), defendants' responses to plaintiff's motion for partial summary judgment were due on January 2, 2015. This matter is now before the Court on *Defendants' Joint Motion for Extension of Time to Respond to Plaintiff C.J. Mahan's Motion for Partial Summary Judgment* ("*Defendants' Motion*"), ECF 28. Defendants seek an extension of time until March 1, 2015 to respond to plaintiff's motion for partial summary judgment. Defendants argue that an extension is necessary because "it is the holiday season" and defendants' counsel will be on vacation or otherwise unavailable through January 5, 2015, additional discovery is needed to respond to the motion and to evaluate defendants' respective positions, and the parties have expressed interest in resolving this dispute through mediation.

Plaintiff opposes *Defendants' Motion*, arguing that defendants have failed to justify such a lengthy extension and that plaintiff will be prejudiced by the extension. *Plaintiff's Memorandum in Opposition to Defendant's Motion to Extend Time to Respond to Summary Judgment* ("*Plaintiff's Response*"), ECF 29. Plaintiff does not oppose extending the deadline to respond until February 2, 2015. *Id.* at p. 3.

Rule 56(d) of the Federal Rules of Civil Procedure establishes the proper procedure to be followed when a party concludes that additional discovery is necessary to respond to a motion for summary judgment:

When Facts Are Unavailable to the Nonmovant. If 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). The affidavit or declaration required by the rule must "indicate to the district court [the party's] need for discovery, what material facts [the party] hopes to uncover, and why [the party] has not previously discovered the information." *Cacevic v. City of Hazel Park*, 226 F.3d 483, 488 (6th Cir. 2000) (citing *Radich v. Goode*, 886 F.2d 1391, 1393-94 (3d Cir. 1989)). A motion under Rule 56(d) may be properly denied where the requesting party "makes only general and conclusory statements [in the supporting affidavit or declaration] regarding the need for more discovery and does not show how an extension of time would have allowed information related to the truth or falsity of the [information sought] to be discovered," *Ball v. Union Carbide Corp.*, 385 F.3d 713, 720 (6th Cir. 2004) (quoting *Ironside v. Simi Valley Hosp.*, 188 F.3d 350, 354 (6th Cir. 1999)), or where the affidavit or declaration "lacks 'any details' or 'specificity.'" *Id.* (quoting *Emmons v. McLaughlin*, 874 F.2d 351, 357 (6th Cir. 1989)). The importance of complying with the specific requirements of Rule 56(d) cannot be over-emphasized. See *Cacevic*, 226 F.3d at 488. Finally, whether or not to grant a request for additional discovery falls within the trial court's discretion. *Egerer v. Woodland Realty, Inc.*, 556 F.3d 415, 426 (6th Cir. 2009).

In the case presently before the Court, defendants argue that

additional discovery is necessary to respond to plaintiff's motion for partial summary judgment. *Defendants' Motion*, p. 2. Defendants have not, however, provided the affidavit or declaration required by Rule 56(d).

Defendants also argue that an extension is necessary because "it is the holiday season" and defendants' counsel will be on vacation or otherwise unavailable through January 5, 2015. *Defendants' Motion*, pp. 1-2. Defendants' counsel's absence may justify some extension of time to respond to plaintiff's motion for partial summary judgment, but absence during the holiday season does not justify the lengthy extension sought by defendants.

Finally, defendants argue that an extension is justified because the parties have expressed an interest in early mediation. *Defendants' Motion*, p. 3. The parties have not yet scheduled mediation; indeed, the parties have been unable to agree on a mediator. *Id.*; *Plaintiff's Response*, p. 2. Under these circumstances, the Court concludes that the parties' interest in mediation, although laudable, is inadequate to justify a two month extension of time to respond to plaintiff's motion for partial summary judgment.

Defendants have failed to justify their request for an extension of time to respond to plaintiff's motion for partial summary judgment. However, as discussed *supra*, plaintiff does not oppose an extension to February 2, 2015 and this Court agrees that a one month extension of time is appropriate.

Defendants may therefore have until February 2, 2015, to respond to plaintiff's motion for partial summary judgment, ECF 27.

Accordingly, *Defendants' Motion*, ECF 28, is **GRANTED in part** and **DENIED in part**, consistent with the foregoing.

January 14, 2015

*s/Norah McCann King*  
Norah M<sup>c</sup>Cann King  
United States Magistrate Judge