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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PATRICIA S. HAWTHORNE, individually  
and as assignee of Oklahoma Court Services,  
Inc.,

Plaintiff,

v.

MID-CONTINENT CASUALTY  
COMPANY, OKLAHOMA SURETY  
COMPANY, an Oklahoma Insurance  
Company,

Defendant.

Case No. C16-1948RSL

ORDER DENYING PLAINTIFF'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S  
REQUEST FOR RELIEF UNDER  
RULE 56(d)

This matter comes before the Court on plaintiff Patricia S. Hawthorne's motion for partial summary judgment (Dkt. # 24), and on defendant Oklahoma Surety Company's request for relief under Fed. R. Civ. P. 56(d) (Dkt. # 30). Having considered the parties' briefing and the remainder of the record, the Court finds as follows.

On November 23, 2016, acting in her individual capacity and as assignee of various insurance claims, plaintiff filed this action in King County Superior Court against Oklahoma Surety Company for bad faith, violation of Washington's Unfair Trade Practices Act, and breach of the contractual duties to defend, settle, and indemnify. Dkt. # 1-1. On December 21, 2016, defendant removed this case to federal court, Dkt. # 1, and shortly thereafter moved to dismiss the case for lack of personal jurisdiction, Dkt. # 9. That motion is still pending before this Court.

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND GRANTING DEFENDANT'S  
REQUEST FOR RELIEF UNDER RULE 56(d) - 1

1 On February 16, 2016, plaintiff filed this motion for partial summary judgment. Dkt.  
2 # 24. Plaintiff seeks a ruling that, as a matter of law, defendant – an insurance company –  
3 breached its contractual duty to defend its insured in a lawsuit filed in King County Superior  
4 Court, and that this breach constitutes bad faith.

5 On March 6, 2017, defendant filed both an opposition to plaintiff’s motion for partial  
6 summary judgment, Dkt. # 27, and a motion for relief pursuant to Fed. R. Civ. P. 56(d). The  
7 motion for relief seeks relief from plaintiff’s motion until after a ruling on defendant’s pending  
8 motion to dismiss or, if that motion is denied, after the close of discovery, Dkt. # 30. At this  
9 time, discovery is scheduled to be completed by October 8, 2017. See Dkt. # 17.

10 Federal Rule of Civil Procedure 56(d) provides that if a “nonmovant shows by affidavit or  
11 declaration that, for specified reasons, it cannot present facts essential to justify its opposition,  
12 the court may . . . defer considering the motion [for summary judgment] or deny it . . . .” Rule  
13 56(d) “provides a device for litigants to avoid summary judgment when they have not had  
14 sufficient time to develop affirmative evidence.” United States v. Kitsap Physicians Serv., 314  
15 F.3d 995, 1000 (9th Cir. 2002). To obtain relief under Rule 56(d), a party must show “(1) that  
16 they have set forth in affidavit form the specific facts that they hope to elicit from further  
17 discovery, (2) that the facts sought exist, and (3) that these sought-after facts are ‘essential’ to  
18 resist the summary judgment motion.” State of California v. Campbell, 138 F.3d 772, 779 (9th  
19 Cir. 1998).

20 An attorney for defendant filed a declaration and several exhibits in support of  
21 defendant’s request for Rule 56(d) relief. Dkt. ## 31, 37. These filings make clear that summary  
22 judgment is inappropriate at this time. First of all, consideration of plaintiff’s motion for  
23 summary judgment before resolution of defendant’s motion to dismiss for lack of personal  
24 jurisdiction would be premature. Next, if plaintiff’s case survives that motion to dismiss (and if  
25 the existence of a related coverage action in Oklahoma state court does not otherwise compel  
26

1 dismissal or stay of this action), defendant will need to respond to plaintiff's amended complaint.  
2 Moreover, discovery would be needed to clarify several fact issues that are essential to the  
3 resolution of plaintiff's bad faith claim – specifically, the relationships between the parties and  
4 the other insurance entities involved in this case, and the circumstances of the denial of  
5 coverage. Defendant has asserted that it intends to depose employees of the insured entity in  
6 addition to conducting written discovery. Dkt. ## 31, 37. These facts are essential to allow the  
7 government to oppose summary judgment. See Campbell, 138 F.3d at 779. Defendant has met  
8 the standards to obtain relief under Rule 56(d).

9  
10 For the foregoing reasons, plaintiff's motion for partial summary judgment (Dkt. # 24) is  
11 DENIED without prejudice to refile at a later date, after the parties have had an opportunity to  
12 conduct discovery. Defendant's motion for relief under Fed. R. Civ. P. 56(d) (Dkt. # 30) is  
13 GRANTED.

14  
15 DATED this 4th day of April, 2017.

16  
17 

18 Robert S. Lasnik  
19 United States District Judge