

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 OSBORNE CONSTRUCTION
10 COMPANY,

11 Plaintiff,

12 v.

13 ZURICH AMERICAN INSURANCE
14 COMPANY,

15 Defendant.

CASE NO. C18-0349-JCC

ORDER

16 This matter comes before the Court on Defendant's motion to continue Plaintiff's motion
17 for partial summary judgment (Dkt. No. 22). Having thoroughly considered the Plaintiff's
18 motion and the relevant record, the Court finds oral argument unnecessary and hereby DENIES
19 the motion for the reasons explained herein.

20 **I. BACKGROUND**

21 This case involves a dispute over insurance coverage. (*See* Dkt. No. 1.) In late 2017,
22 Defendant denied Plaintiff, a general contractor, coverage as an additional insured under a
23 subcontractor's insurance policy. (*Id.* at 4–5.) Plaintiff filed this lawsuit on March 7, 2018,
24 seeking declaratory and compensatory relief. (*Id.* at 8–9.) On October 18, 2018, Plaintiff moved
25 for partial summary judgment. (Dkt. No. 19.) It seeks a ruling that, as a matter of law, Defendant
26 owed it a duty to provide a defense under the terms of the insurance policy, that Defendant's

1 denial of coverage was in bad faith, and that as a result, Defendant is estopped from now denying
2 coverage. (*Id.* at 21.)

3 Plaintiff's motion for partial summary judgment was originally noted for November 9,
4 2018. (Dkt. No. 19 at 1.) Defendant moves to continue the noting date by three weeks to
5 accommodate the deposition of Daniel Jacobson. (Dkt. No. 22.) Mr. Jacobson is one of
6 Plaintiff's directors, and sent Defendant the letter initially requesting coverage. (*Id.*) In a
7 declaration, defense counsel states that she attempted to arrange a time to depose Mr. Jacobson
8 before Plaintiff filed its motion for partial summary judgment, but that Plaintiff's counsel was
9 uncooperative. (Dkt. No. 23 at 2–3.) Mr. Jacobson is now scheduled to be deposed on November
10 1, 2018. (*Id.* at 3.) Defense counsel states that she “determined that [Mr. Jacobson] . . . is a
11 material witness,” and told Plaintiff that Defendant “need[s] Mr. Jacobson’s testimony before [it]
12 can respond” to the motion for partial summary judgment. (*Id.* at 2–3.) Plaintiff refused
13 Defendant’s request to withdraw the motion to allow time for the deposition, but voluntarily re-
14 noted the motion for one week later, on November 16, 2018.¹ (Dkt. No. 24.)

15 **II. DISCUSSION**

16 **A. Legal Standard**

17 The Court may continue a motion for summary judgment to permit additional discovery
18 if the non-movant shows that it lacks specific facts essential to opposing the motion. Fed. R. Civ.
19 P. 56(d)(2). The party requesting a continuance must show: “(1) that they have set forth in
20 affidavit form the specific facts that they hope to elicit from further discovery, (2) that the facts
21 sought exist, and (3) that these sought-after facts are ‘essential’ to resist the summary judgment
22 motion.” *California ex rel. Cal. Dep’t of Toxic Substances Control v. Campbell*, 138 F.3d 772,
23 779 (9th Cir. 1998).

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26 ¹ It appears to the Court that Plaintiff’s decision to re-note its motion was an effort to allow
Defendant to incorporate Mr. Jacobson’s deposition testimony into its response.

1 **B. Defendant’s Motion to Continue**

2 Defense counsel’s affidavit does not specify what facts Defendant hopes to obtain from
3 Mr. Jacobson’s deposition, nor explain how his testimony is essential to its ability to respond to
4 Plaintiff’s motion for partial summary judgment. Defendant merely states that Mr. Jacobson is a
5 “material witness,” that it “need[s] [his] testimony before [it] can respond to [Plaintiff’s] motion
6 [for partial summary judgment],” and that a transcript of the deposition will not be available in
7 time to incorporate the testimony into its response. (Dkt. No. 23 at 2–3.) To justify continuing
8 Plaintiff’s motion, Defendant has the burden to first identify “*specific facts* that [it] hope[s] to
9 elicit from further discovery,” and then to demonstrate how those facts are essential to its ability
10 to respond to Plaintiff’s motion for partial summary judgment. *Campbell*, 138 F.3d at 779
11 (emphasis added). Defendant has failed to identify *any* facts it hopes to elicit from Mr. Jacobson,
12 much less provide a compelling justification for why it needs those facts to fully respond to
13 Plaintiff’s motion. Thus, Defendant has failed to provide a sufficient justification for continuing
14 Plaintiff’s motion for partial summary judgment.

15 **III. CONCLUSION**

16 For the foregoing reasons, Defendant’s motion to continue plaintiff’s motion for partial
17 summary judgment (Dkt. No. 22) is DENIED.

18 DATED this 2nd day of November 2018.

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22 John C. Coughenour
23 UNITED STATES DISTRICT JUDGE