

1 Judge Robert S. Lasnik

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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 THE HANOVER INSURANCE COMPANY,

No. 2:18-cv-00651- RSL

11 Plaintiff,

STIPULATED MOTION AND ORDER TO  
CONTINUE DISCOVERY DEADLINE

12 v.

13 HURDELBRINK LAW OFFICE, INC.,  
14 MARK E. HURDELBRINK and  
CHRISTOPHER WILCOX,

15 Defendants.

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17 **I. INTRODUCTION AND RELIEF REQUESTED**

18 Pursuant to Federal Rule of Civil Procedure 16(b)(4), Plaintiff Hanover Insurance  
19 Company and Defendants Hurdelbrink Law Office, Inc. and Mark E. Hurdelbrink (collectively  
20 “Defendants Hurdelbrink”) jointly request an order continuing the deadline to complete  
21 discovery to January 31, 2019. This continuance would allow the parties to complete  
22 depositions and finish production of documents requested pursuant to written discovery. This  
23 joint request to move the discovery cutoff date of January 7, 2019<sup>1</sup> to January 31, 2019  
24 encompasses less than a month change and would not affect any other deadline as set in the  
25 Court’s Minute Order. Dkt. 15 at p. 1.

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27 <sup>1</sup> The current deadline January 6, 2019 falls on a Sunday, and per the minute order (dkt. 15 at 2)  
the deadline then falls on the following Monday—January 7, 2019.

1 The parties have diligently engaged in discovery, worked cooperatively, and have not  
2 previously requested a continuance or modification of any of this Court's orders.<sup>2</sup>

## 3 II. BACKGROUND

4 This is a declaratory action seeking to determine whether Plaintiff has a duty to defend or  
5 indemnify Defendants Hurdelbrink related to claims arising from Defendants Hurdelbrink's  
6 representation of Christopher Wilcox ("Wilcox") in a now resolved divorce proceeding in  
7 Thurston County Superior Court. *See* Dkt. 1. Plaintiff asserts that conditions precedent for  
8 coverage under the insuring agreement of the applicable policy were not satisfied and that  
9 Defendants engaged in conduct during the renewal of his policy barring coverage. *Id.* at ¶¶ 48-  
10 59. Defendants Hurdelbrink deny Plaintiff's allegations and, by way of counterclaims, assert  
11 extracontractual claims for breach of the duty of good faith, attorney's fees for the litigation,  
12 and reserves the right to pursue an Insurance Fair Conduct Act violation claim. Dkt. 12 at ¶¶ 27-  
13 37. Plaintiff denies Defendants Hurdelbrink's counterclaims. Dkt. 13.

14 Since the Court's entry of the Minute Order Setting Trial Date & Related Dates, the  
15 parties have exchanged initial disclosures and written discovery requests have been propounded  
16 and partial responded. Namely, Plaintiff has propounded requests for production of certain  
17 documents for which Defendants Hurdelbrink are still gathering responsive documents. To  
18 date, both parties have work amicably, and with flexibility, to attempt to be diligent in discovery  
19 both formal and informal. It is believed by both parties that these outstanding record  
20 productions will be concluded before the proposed January 31, 2019 deadline.

21 In addition, the Parties have limited depositions that will occur in the first week of  
22 January ahead of the discovery cut off, including Defendant Hurdelbrink's deposition and the  
23 deposition of an employee of Hurdelbrink Law. Plaintiff, to date, has waited to note the  
24 Defendants Hurdelbrink's deposition in order to have complete records previously requested  
25 through written discovery.

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26 <sup>2</sup> However, the Parties did initially request a discovery deadline of March 1, 2019 in their Joint  
27 Status Report and Discovery Plan. Dkt. 14 at 5. This motion asks for a date more than a month  
before that requested date.

1           Additionally, Defendants Hurdlebrink attempted though informal requests, or relayed to  
2           Plaintiff’s counsel they would attempt, to obtain non-privileged files and records from non-party  
3           third party entities including Ms. Wilcox’s attorneys in the divorce proceedings: Barbara Jo  
4           Sylvester, Chris Maharry, and Paul Firuz. Unfortunately, to date those records have not been  
5           obtained. Plaintiff has issued subpoenas to these individuals for the records. Following receipt  
6           of the records, should additional information be necessary, Plaintiff (or Defendants  
7           Hurdlebrink) may wish to depose these individuals. To ensure dates suitable for the non-parties  
8           can be obtained after obtaining the records pursuant to the subpoenas, the parties seek this  
9           continuance. Again, both parties believe these depositions can be completed ahead of January  
10          31, 2019, should be they be needed.

11          The parties have not previously requested a continuation of deadlines or an amendment to  
12          the court’s orders.

13    **III.    ISSUE PRESENTED**

14          Whether under Federal Rule of Civil Procedure 16(b)(4), the Court should amend the  
15          Minute Order (dkt. 15) to continue the discovery cutoff date for less than a month so that the  
16          parties can attempt to obtain additional written and oral discovery without resorting to motions  
17          practice to compel the same and to obtain documents through formal means when informal  
18          requests failed.

19    **IV.    ANALYSIS**

20          Pursuant to Federal Rule of Civil Procedure 16(b)(4), “[a] schedule may be modified for  
21          good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Good cause for purposes of  
22          Rule 16 focuses on the diligence of the party seeking to modify the pre-trial scheduling order.  
23          *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). Good cause  
24          means scheduling deadlines cannot be met despite the parties’ diligence. *Id.* at 609. Here, the  
25          parties have engaged in active and diligent discovery. Most notably, the parties have worked  
26          diligently together, without Court intervention, related to obtaining overdue documents pursuant  
27          to written discovery. In order to save the Court’s resources and avoid an unnecessary motion to

1 compel these documents not yet produced, the parties seek a short continuance to attempt to  
2 resolve the outstanding record production, as well as obtain documents from third-parties that  
3 they hoped would have been obtainable through informal means. Importantly, upon receipt of  
4 the third-party records it may be that no additional discovery is necessary, but the parties wish  
5 to extend the deadline so as to set depositions for the parties subject to the third party subpoenas  
6 should they be necessary.

7 The proposed continuance would not impact any other date set in the minute order and  
8 specifically would not effect the trial date or the dispositive motion deadline.

9 **V. CONCLUSION**

10 This requested continuance is reflective of the interest of conserving litigation and  
11 judicial resources. A proposed Stipulated Order is provided for the Court's consideration.

12 DATED: December 20, 2018

13  
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**ORDER**

Based on the Stipulated Motion filed by the Parties, it is hereby ORDERED, for good cause shown, that the discovery cutoff be continued to January 31, 2019.

DATED this 21st day of December, 2018.

  
The Honorable Robert S. Lasnik