

**IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA**

FILED
DISTRICT COURT
COMANCHE COUNTY, OKLAHOMA
July 16, 2026 4:30 PM
ROBERT MORALES, COURT CLERK
Case Number CJ-2025-135

NEIL and LACY WEST,	)	
	)	
Plaintiffs,	)	
	)	Case No. CJ-2025-135
v.	)	
	)	JUDGE SHEPERD
STATE FARM FIRE AND CASUALTY	)	
COMPANY and NANCY HOLCOMB INS.	)	
AGENCY, INC.,	)	
	)	
Defendants.	)	

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S REPLY IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

TIMILA S. ROTHER, OBA #14310
PAIGE A. MASTERS, OBA #31142
AMANDA M. FINCH, OBA #34650
CROWE & DUNLEVY
A Professional Corporation
Braniff Building
324 North Robinson Avenue, Suite 100
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-7700
Facsimile: (405) 239-6651
timila.rother@crowedunlevy.com
paige.masters@crowedunlevy.com
amanda.finch@crowedunlevy.com

**ATTORNEYS FOR DEFENDANT STATE
FARM FIRE AND CASUALTY COMPANY**

Instead of responding to Defendant State Farm Fire and Casualty Company's ("State Farm") Motion for Summary Judgment ("MSJ"), Plaintiffs filed only counsel's Rule 13 Affidavit, asserting that additional discovery is needed before Plaintiffs can respond. Plaintiffs, however, have not identified specific facts necessary to oppose State Farm's MSJ, explained how the requested discovery would create a genuine dispute as to any ground raised in the MSJ, or otherwise demonstrated entitlement to relief under Rule 13(d) or 12 O.S. § 2056(F). *See Whitten Aff.* Nor did Plaintiffs respond to State Farm's Statement of Undisputed Material Facts. Rule 13 requires a party opposing summary judgment to specifically controvert the movant's properly supported material facts. Plaintiffs did not. Accordingly, if the Court denies Plaintiffs' request for relief under Rule 13(d) and 12 O.S. § 2056(F) and proceeds to decide the Motion on the present record, State Farm's Undisputed Material Facts should be deemed admitted.

I. PLAINTIFFS HAVE NOT MET THEIR BURDEN UNDER RULE 13(D) OR 12 O.S. § 2056(F).

Neither Rule 13(d) nor § 2056(F) gives a party an automatic right to postpone summary judgment until all discovery is complete. Rather, those provisions permit relief only when the party opposing summary judgment shows, by affidavit and for stated or specified reasons, that it cannot present evidentiary material or facts essential to justify its opposition. *See R. Dist. Cts. Okla. R. 13(d); 12 O.S. § 2056(F).* Plaintiffs were required to identify the specific facts they cannot presently present, explain why those facts remain unavailable, and show how additional discovery would create a genuine dispute as to the grounds raised in State Farm's Motion. They have not.

A. PLAINTIFFS HAVE NOT SHOWN GOOD CAUSE TO DELAY CONSIDERATION OF STATE FARM'S MOTION.

An agreed Scheduling Order entered on December 11, 2025, required dispositive motions to be filed by May 26, 2026, and discovery to be completed by July 23, 2026. State Farm filed its MSJ on the dispositive-motion deadline. Before that deadline, counsel for State Farm offered to

extend it, anticipating Plaintiffs might later claim additional discovery was needed to respond. Rother Email, May 17, 2026, Ex. 1. Plaintiffs refused. Sonne Email, May 19, 2026, Ex. 1. State Farm then filed its MSJ pursuant to the Scheduling Order.

In *Fed. Land Bank of Wichita v. Musgrove*, the Oklahoma Court of Civil Appeals affirmed the denial of a request for additional time to conduct discovery before responding to summary judgment, explaining that “[a] party urging more time to prepare as grounds for a continuance must produce evidence of [] due diligence in the time [] already allotted.” 1990 OK CIV APP 64, ¶ 7, 796 P.2d 641, 644. The court further held that “it is not error to deny a continuance in order to afford time to controvert adverse evidence, when the record reflects there was a fair opportunity to controvert and there was no explanation of the nature of the evidence expected to be adduced if the continuance was granted.” *Id.* That reasoning applies here. Plaintiffs were aware of the dispositive motion deadline, were offered the opportunity to extend it, and declined. The current procedural posture is therefore the product of Plaintiffs’ own litigation choices. They now seek to delay consideration of State Farm’s MSJ without explaining why the discovery they claim is necessary could not have been obtained earlier, why they declined to extend the deadline, or how the requested discovery would enable them to rebut the grounds raised in State Farm’s Motion. *See Fed. Land Bank*, 1990 OK CIV APP 64, ¶¶ 7-9, 796 P.2d at 644-45; *Walker v. inVentiv Health, Inc.*, No. 17-CV-345-JED-FHM, 2020 WL 13702741, at *3 (N.D. Okla. Sept. 28, 2020) (entering summary judgment over a Rule 56(d) request where plaintiff provided no justification for delay).¹

B. THE WHITTEN AFFIDAVIT DOES NOT ESTABLISH THAT ADDITIONAL DISCOVERY IS NECESSARY TO OPPOSE STATE FARM’S MOTION FOR SUMMARY JUDGMENT.

¹ Because Oklahoma’s summary judgment procedure was patterned after Federal Rule of Civil Procedure 56, federal cases interpreting Rule 56 are given special consideration. *Savage v. Burton*, 2005 OK CIV APP 106, ¶ 10, 125 P.3d 1249, 1252 (quoting *Kepler v. Strain*, 1978 OK 52, ¶ 7, 579 P.2d 191, 192).

Even if Plaintiffs had shown good cause to delay consideration of State Farm's MSJ, the Whitten Affidavit still does not satisfy Rule 13(d) or § 2056(F). Those provisions require the party opposing summary judgment to show, "for specified reasons," that it "cannot present facts essential to justify its opposition." 12 O.S. § 2056(F); R. Dist. Cts. Okla. R. 13(d). A general assertion that discovery remains outstanding is not enough. These provisions are "not a 'license for a fishing expedition,'" and the party seeking to defer ruling on summary judgment must identify specific discovery necessary to respond to the motion. *Cox v. Swift Transp. Co. of Ariz., LLC*, No. 18-CV-0117-CVE-JFJ, 2019 WL 1546941, at *3 (N.D. Okla. Apr. 9, 2019) (citation omitted).

To meet that burden, Plaintiffs were required to identify "the facts not available, why those facts cannot be presented without additional time, [] the steps taken to obtain the facts, and [] how additional time will enable the non-movant to rebut the motion for summary judgment." *Walker*, 2020 WL 13702741 at *3 (citation omitted). "Relief should not be granted ... when the 'desired discovery would not meet the issue on which the moving party contends there is no genuine factual issue.'" *Cox*, 2019 WL 1546941, at *3 (citation omitted); *see also Scott v. Hormel*, No. CIV-18-395-SLP, 2020 WL 2128584, at *2 (W.D. Okla. May 5, 2020), *aff'd*, 854 F. App'x 958 (10th Cir. 2021) (finding Rule 56(d) requirements were not met where the plaintiff failed to explain how additional time would allow him to rebut the defendants' summary judgment arguments).

The Whitten Affidavit does not make the required showing. It identifies broad categories of discovery Plaintiffs would like to obtain, but the Affidavit does not identify any specific fact Plaintiffs need in order to oppose State Farm's MSJ. Nor does it explain why any such fact is presently unavailable or identify what steps Plaintiffs took to obtain those specific facts before State Farm filed its MSJ. And it does not explain how the requested discovery would enable Plaintiffs to rebut any particular argument raised in State Farm's Motion.

That omission alone defeats Plaintiffs' request for relief. State Farm's MSJ is based on the Policy's Suit Against Us provision, the undisputed facts establishing a legitimate dispute as a matter of law, the absence of evidence supporting Plaintiffs' constructive fraud claim, and the absence of any basis for punitive damages. The Whitten Affidavit does not explain how any additional discovery would create a genuine dispute as to any of those grounds. Instead, Plaintiffs ask the Court to postpone ruling based on broad discovery categories divorced from the issues raised in State Farm's MSJ. That is precisely what § 2056(F) and Rule 13(d) do not permit. Plaintiffs have therefore not met their burden to show that additional discovery is necessary to oppose State Farm's Motion.

II. PLAINTIFFS HAVE FAILED TO CONTROVERT STATE FARM'S STATEMENT OF UNDISPUTED MATERIAL FACTS.

Although Plaintiffs filed the Whitten Affidavit seeking additional time to conduct discovery, they did not file a response to State Farm's Statement of Undisputed Material Facts. Rule 13 expressly provides that "[a]ll material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment [] unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material." R. Dist. Cts. of Okla. R. 13(b). The Whitten Affidavit does not excuse Plaintiffs' obligation to respond to State Farm's Statement of Undisputed Material Facts. Accordingly, if the Court denies Plaintiffs' request for Rule 13(d)/§ 2056(F) relief and proceeds to decide the Motion on the present record, State Farm's Undisputed Material Facts should be deemed admitted under Rule 13(b).

III. THE COURT SHOULD DECIDE STATE FARM'S MOTION ON THE PRESENT RECORD.

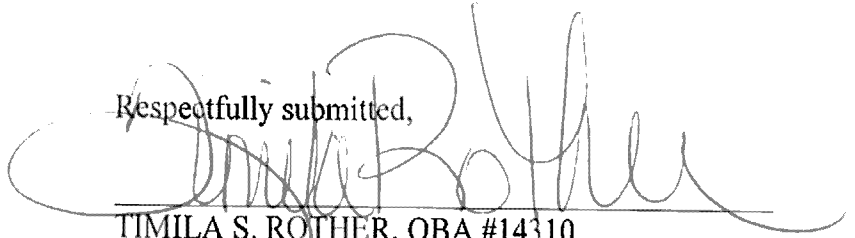
A court considering summary judgment must evaluate the motion on the record actually presented, not on a record that is merely "potentially possible." *Fed. Land Bank*, 1990 OK CIV

APP 64, ¶ 8, 796 P.2d 641, 644 (affirming summary judgment based upon “the record the parties have actually presented and not on a record which is potentially possible”); *McClain v. Riverview Vill., Inc.*, 2011 OK CIV APP 57, ¶ 7, 250 P.3d 919, 921 (affirming summary judgment where plaintiffs did not provide “reasons why [they] could not yet present evidentiary material sufficient to controvert” the undisputed material facts); *Gutierrez v. Cobos*, 841 F.3d 895, 909 (10th Cir. 2016) (affirming denial of Rule 56(d) motion where movant did not explain how specific information sought was essential to summary judgment opposition); *Scott v. Hormel*, No. CIV-18-395-SLP, 2020 WL 2128584, at *2 (W.D. Okla. May 5, 2020), *aff’d*, 854 F. App’x 958 (10th Cir. 2021) (finding plaintiff’s 56(d) request insufficient because he did not indicate “‘how additional time would allow for rebuttal of [] argument for summary judgment’ even if the documents and information ... were produced”). As set forth in State Farm’s Motion, the undisputed facts establish several independent grounds for summary judgment, including that Plaintiffs’ claims are barred by the Policy’s Suit Against Us provision, that a legitimate dispute existed as a matter of law, that Plaintiffs cannot establish constructive fraud, and that punitive damages are unavailable. Accordingly, Plaintiffs have established no basis to delay consideration of State Farm’s Motion, and the Court should grant summary judgment in State Farm’s favor.

IV. CONCLUSION

Plaintiffs have not met their burden under Rule 13(d) or 12 O.S. § 2056(F), have not identified discovery necessary to create a genuine dispute as to any ground raised in State Farm’s MSJ, and have not filed a Rule 13 response controverting State Farm’s Statement of Undisputed Material Facts. Accordingly, State Farm respectfully requests that the Court deny Plaintiffs’ request for additional time, deem State Farm’s Undisputed Material Facts admitted under Rule 13(b), and grant State Farm’s Motion for Summary Judgment in its entirety.

Respectfully submitted,



TIMILA S. ROTHER, OBA #14310

PAIGE A. MASTERS, OBA #31142

AMANDA M. FINCH, OBA #34650

CROWE DUNLEVY

A Professional Corporation

Braniff Building

324 North Robinson Avenue, Suite 100

Oklahoma City, Oklahoma 73102

Telephone: (405) 235-7700

Facsimile: (405) 239-6651

timila.rother@crowedunlevy.com

paige.masters@crowedunlevy.com

amanda.finch@crowedunlevy.com

**ATTORNEYS FOR DEFENDANT STATE
FARM FIRE AND CASUALTY COMPANY**

CERTIFICATE OF SERVICE

This is to certify that on the 16th day of July 2026, the undersigned caused a true and correct copy of the above and foregoing to be mailed to:

Reggie N. Whitten

Michael Burrage

Blake Sonne

Hannah Whitten

John S. Sanders

Jake Denne

WHITTEN BURRAGE

512 North Broadway Avenue, Suite 300

Oklahoma City, OK 73102

Brad W. Burgess

Colby A. Stephenson

**BURGESS & HIGHTOWER LAW
FIRM**

21 N 44th Street, Suite 201

Lawton, OK 73505

ATTORNEYS FOR PLAINTIFFS

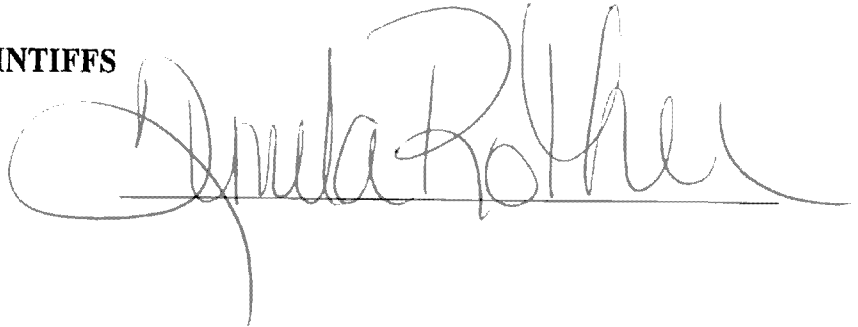


Exhibit 1

Paige Masters

From: Timila S. Rother
Sent: Tuesday, May 19, 2026 8:48 AM
To: Blake Sonne; Paige Masters; Amanda Finch
Cc: Reggie N. Whitten; Michael Burrage; Hannah Whitten; John Sanders; Jake Denne; Karen Stratton; Kayli Price; Autumn Hobbs; james warner
Subject: RE: State Farm - Federal Cases with Deposition Notices for Nicole Manduca
Attachments: West v. State Farm - Deposition of Contractor & Public Adjuster

Blake,

I will, as noted, respond in more detail to the production and deposition issues, but respond quickly here to note that you overstated my question/request. My focus was on the Motion for Summary Judgment (and other) deadlines for Friday as, regardless of the timeline for depositions and production, I anticipate you all will not respond in 18 days because of ongoing discovery - even *if* the depositions were all agreed they would not be completed before your response is due and you have advised of an intended second motion to compel. To be transparent, I also advised that I do not believe the document production can be completed by June 1. I was not asking to extend the scheduling order, but rather anticipating that you would based on the discovery you are pursuing. I disagree with your premise that this is inconsistent with our prior objections as those are the federal court cases where the discovery was not timely pursued at all (the most recent cases) and/or was being asked to be halted in an effort to apply the Judge Palumbo orders to those cases. Indeed, in the early stages of those disputes we were noting that we would agree to a reasonable extension 30-60 days or the like, but not 120 and not on the premise that the Judge Palumbo orders were operative in the federal cases.

Regardless, we will proceed with summary judgment motions on Friday and object to any requested extensions to respond given the below, noting to the Judge our effort to avoid that situation being created at all. If there is an agreement to be reached there, let me know. Perhaps we can discuss after a more full report on the status of the efforts to comply with the Judge's Order.

We have outstanding requests to you from a week ago about dates for the contractor depositions (see attached). Unless you have dates in the works, we will go ahead and notice them and then work with you to move them as needed. One of them is the public adjuster who is, I think, in Florida, and so that one will require more work to coordinate so we will likely just proceed with that subpoena and notice to get the ball moving. I anticipate we can take his deposition virtually.

Thanks
Timila



Timila S. Rother
Shareholder/Director
405.235.7757



This message may be protected by the attorney-client privilege and/or other privileges or protections. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error and then delete it. Thank you.

From: Blake Sonne <bsonne@whittenburragelaw.com>

Sent: Monday, May 18, 2026 2:43 PM

To: Timila S. Rother <timila.rother@crowedunlevy.com>; Paige Masters <paige.masters@crowedunlevy.com>; Amanda Finch <amanda.finch@crowedunlevy.com>

Cc: Reggie N. Whitten <rwhitten@whittenburragelaw.com>; Michael Burrage <mburrage@whittenburragelaw.com>; Hannah Whitten <hwhitten@whittenburragelaw.com>; John Sanders <jsanders@whittenburragelaw.com>; Jake Denne <jdenne@whittenburragelaw.com>; Karen Stratton <kstratton@whittenburragelaw.com>; Kayli Price <kprice@whittenburragelaw.com>; Autumn Hobbs <ahobbs@whittenburragelaw.com>; james warner <jwarner@nixlaw.com>

Subject: Re: State Farm - Federal Cases with Deposition Notices for Nicole Manduca

ALERT: Email contains attachments from external sender. Be cautious.

Timila,

Thank you for your email. We do not agree to any extension of the deadlines in the West case. As you know, discovery is open through the pre-trial conference on July 23, 2026. We have sought extensions on numerous occasions in other federal cases because State Farm has refused in every case to produce documents related to the FME Wind/Hail team and its implementation in Oklahoma. You have indicated an objection in every case so your request to seek an extension of deadlines now that the documents have been ordered to be produced in yet another case is not received well and is extremely inconsistent.

We also object to what appears to be your statement that State Farm will not comply with the Court's deadline of document production by June 1st. As you know, many of these documents (related to the last round of cases) were ordered to be produced by Judge Palumbo by December 24, 2025, with the remaining documents to be produced in late February I believe. If you file any motion for summary judgment, we will certainly file a response with use of these documents ordered to be produced by the Court by June 1st.

We look forward to hearing from you by Wednesday on the Manduca depo and the other executives to be deposed in June. As we stated very clearly, if you re-assert your objection to those other noticed depositions, we will file a motion to compel and get the issue before the Court as soon as possible so please advise.

We will likewise provide some dates for the depositions of the adjusters and TM we want to depose. Thank you.

BLAKE SONNE
ATTORNEY, OF COUNSEL

WB
WHITTEN BURRAGE

512 N. Broadway Ave., Suite 300 | Oklahoma City, OK 73102
405.516.7800 Tel | 405.516.7859 Fax | 405.664.2919 Cell
bsonne@whittenburrage.com
www.whittenburrage.com

The information in this e-mail message is intended for the confidential use of addressees only. The information may be subject to the attorney-client privilege and/or may be attorney work-product. If you received this e-mail in error, please notify Whitten Burrage immediately at the telephone number listed above. Thank you.

From: "Timila S. Rother" <timila.rother@crowedunlevy.com>

Date: Sunday, May 17, 2026 at 12:50 PM

To: Blake Sonne <bsonne@whittenburrage.com>, Paige Masters <paige.masters@crowedunlevy.com>, Amanda Finch <amanda.finch@crowedunlevy.com>

Cc: "Reggie N. Whitten" <rwhitten@whittenburrage.com>, Michael Burrage <mburrage@whittenburrage.com>, Hannah Whitten <hwhitten@whittenburrage.com>, John Sanders <jsanders@whittenburrage.com>, Jake Denne <jdenne@whittenburrage.com>, Karen Stratton <kstratton@whittenburrage.com>, Kayli Price <kprice@whittenburrage.com>, Autumn Hobbs <ahobbs@whittenburrage.com>, james warner <jwarner@nixlaw.com>

Subject: RE: State Farm - Federal Cases with Deposition Notices for Nicole Manduca

Blake,

I am catching up on email after being out-of-state and in all day meetings since Thursday. I have a call scheduled with State Farm on Tuesday to discuss the issues that are raised in your series of emails and I will send a quick separate response to the email that includes Lance on the issues as to deposition scheduling for Ms. Manduca and document production on Porter, Barlow and Cisneros.

As to West document production and timing, as noted I will respond more fully when I get an update from State Farm, but a couple of things. As you know, we did not receive this order until 10 days after it was entered. I am not sure if we could meet June 1 no matter what but certainly that is harder if we lost 10 days of the period allowed by the Court. I know this overlaps with other production and I know it is in the works but I am going to have to get more information. As you know, State Farm is juggling production orders in several cases.

But that brings me to a scheduling question. Our first round of filings, dispositive motions and preliminary witness and exhibit lists are due on May 22. In the last several cases we have filed MSJs and you all have responded with requests to extend the response date based on discovery issues. The pretrial conference date is mid-July with a lot of other deadlines due mid-June. Do you all anticipate asking to extend the scheduling order in this case as well and/or to ask for an extension to respond to our MSJ if we file it on May 22? If so, I think it makes sense to do that sooner rather than later to avoid what we both have due on Friday. If not, we can proceed with our Motion for Summary Judgment. I just wanted to get that out there before the week gets away. And certainly in the interest of candor, I anticipate State Farm may need more time to complete the ordered document production, even if it can begin production on June 1. Hopefully I will have more clarity on that by Wednesday but I am not sure how we meet a July pretrial conference either way.

Thanks
Timila



Timila S. Rother
Shareholder/Director
405.235.7757



This message may be protected by the attorney-client privilege and/or other privileges or protections. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you have received the message in error and then delete it. Thank you.

From: Blake Sonne <bsonne@whittenburragelaw.com>

Sent: Friday, May 15, 2026 3:49 PM

To: Timila S. Rother <timila.rother@crowedunlevy.com>; Paige Masters <paige.masters@crowedunlevy.com>; Amanda Finch <amanda.finch@crowedunlevy.com>

Cc: Reggie N. Whitten <rwhitten@whittenburragelaw.com>; Michael Burrage <mburrage@whittenburragelaw.com>; Hannah Whitten <hwhitten@whittenburragelaw.com>; John Sanders <jsanders@whittenburragelaw.com>; Jake Denne <jdenne@whittenburragelaw.com>; Karen Stratton <kstratton@whittenburragelaw.com>; Kayli Price <kprice@whittenburragelaw.com>; Autumn Hobbs <ahobbs@whittenburragelaw.com>; James Warner <jwarner@nixlaw.com>

Subject: FW: State Farm - Federal Cases with Deposition Notices for Nicole Manduca

ALERT: Email contains attachments from external sender. Be cautious.

Timila,

With respect to my email below and the West case...we will be filing our motion to compel on the second set of discovery as mentioned. We have previously discussed requests to produce the industry standards/Accenture, claim files, and the Manduca depo in a conversation and phone call. I do not recall discussing the other depositions other than Taylor as well. However, I just wanted to again request production of these requested depositions and exhibits in our second requests without court intervention. Based on our conversations about Manduca and Taylor, I do not believe State Farm will produce these documents, depositions, or claim files, but please advise if you have any indication of a change in position. We plan to file Monday and of course stand willing to discuss at any time prior to any hearing on the motion. Thanks and hope you guys have a great weekend.

BLAKE SONNE
ATTORNEY, OF COUNSEL

WB
WHITTEN BURRAGE
512 N. Broadway Ave., Suite 300 | Oklahoma City, OK 73102
405.516.7800 Tel | 405.516.7859 Fax | 405.664.2919 Cell
bsonne@whittenburragelaw.com
www.whittenburragelaw.com