

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

FILED
DISTRICT COURT
COMANCHE COUNTY, OKLAHOMA
July 16, 2026 3:33 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 NANCY HOLCOMB INSURANCE AGENCY, INC.'S REPLY IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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**ATTORNEYS FOR DEFENDANT NANCY
HOLCOMB INSURANCE AGENCY, INC.**

Instead of responding to Defendant Nancy Holcomb Insurance Agency, Inc.'s ("Holcomb Agency") Motion for Summary Judgment ("MSJ") filed on the dispositive motion deadline, Plaintiffs' counsel filed a Rule 13 Affidavit on June 10, 2026, telling this Court that the Holcomb Agency's MSJ is premature because Plaintiffs need to conduct discovery—*despite having, as of that date, conducted no discovery of the Holcomb Agency at all*. When a motion for summary judgment is filed, Oklahoma law gives a court discretion to order a continuance to enable the opposing party to conduct limited discovery, only when the opponent "shows by affidavit that, *for specified reasons*, it cannot present facts essential to justify its opposition." 12 O.S. § 2056(F) (emphasis added). And, "[a] party urging more time to prepare as grounds for a continuance must produce evidence of his due diligence in the time that was already allotted." *Fed. Land Bank of Wichita v. Musgrove*, 1990 OK CIV APP 64, ¶ 7, 796 P.2d 641, 644. "[I]t 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 is precisely what occurred here.

This case was remanded to this Court on August 25, 2025. After the Court denied its Motion to Dismiss, the Holcomb Agency filed its Answer on November 12, 2025. An *agreed* Scheduling Order was entered on December 11, 2025, under which the parties agreed that dispositive motions would be due on May 26, 2026 and discovery would close on July 23, 2026. Plaintiffs did not pursue discovery from the Holcomb Agency until *after* the Holcomb Agency filed its MSJ. In fact, on the same day Plaintiffs filed their Rule 13 Affidavit and the day their response to the Agency's MSJ was due, Plaintiffs first served their First Set of Discovery Requests to counsel for the Holcomb Agency along with a notice of corporate representative deposition for

the deposition to occur a month later on July 16, 2026. Thus, Plaintiffs did not even commence discovery until the day they were to respond to the MSJ.

In fact, anticipating this very scenario given what had occurred in other cases, counsel for the Holcomb Agency suggested extending the dispositive motion deadline if Plaintiffs' counsel was just going to claim to be unable to respond due to the need for discovery. Rother Email, May 17, 2026, Ex. 1. *Plaintiffs made clear they did not want to extend the deadline*, Sonne Email, May 19, 2026, Ex. 1. Thus, the Holcomb Agency filed its MSJ pursuant to the Order of the Court.

The current summary judgment posture is entirely one of Plaintiffs' own making and they should not benefit from it. To the extent Plaintiffs do not have the information to respond to the Holcomb Agency's MSJ, that is due to their own lack of diligence and choices. They have not and cannot explain their delay. For that reason alone, their request for more time to respond to the MSJ should be denied and the undisputed material facts set forth in the MSJ should be deemed admitted. R. Dist. Cts. of Okla. R. 13(b) ("All 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 or summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material."); *Fed. Land Bank*, 1990 OK CIV APP 64, ¶¶ 7-9, 796 P.2d at 644-45 (affirming denial of request for continuance to conduct discovery to respond to motion for summary judgment and affirming summary judgment); *Walker v. inVentiv Health, Inc.*, No. 17-CV-345-JED-FHM, 2020 WL 13702741, at *3 (N.D. Okla. Sept. 28, 2020) (rejecting request for continuance under Fed. R. Civ. P. 56(d), finding plaintiff provided no justification for delay, and entering summary judgment).¹

¹ "Because Oklahoma's district court rule for disposing of matters by summary judgment, Rule 13, was patterned after Rule 56 of the Federal Rules of Civil Procedure, 28 U.S.C.A., 'the Federal cases thereunder are given special consideration by the Court.'" *Savage v. Burton*, 2005 OK CIV

Even if Plaintiffs had been diligent in seeking discovery from the Holcomb Agency, they have not met their burden to show specified discovery is necessary before deciding summary judgment. While their counsel provided a bare bones affidavit, it does not identify any “specified reasons” that they cannot present facts essential to justify their opposition. 12 O.S. § 2056(F). Section 2056(F) “is not a ‘license for a fishing expedition’ and the party seeking to defer a ruling on a motion for summary judgment must identify specific discovery that is necessary in order to fully 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) (quoting *Lewis v. City of Fort Collins*, 903 F.2d 752, 759 (10th Cir. 1990)). This includes identification of “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 (citing *Valley Forge Ins. Co. v. Health Care Mgmt. Partners*, 616 F.3d 1086, 1096 (10th Cir. 2010)). “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 (quoting *Jones v. City and County of Denver, Colorado*, 854 F.2d 1206, 1211 (10th Cir. 1988)).

For the most part, Plaintiffs’ counsel’s affidavit complains about discovery requested from *State Farm*. Whitten Aff., ¶¶ 7-13. As for the discovery sought from the Holcomb Agency via deposition and written discovery, a good portion of the topics identified relate to State Farm’s *claim handling*, including “Hail Focus Initiative,” “Claim Handling Hygiene,” so-called “Wind/Hail Playbook,” training by Haag on identification of hail damage, “HAAG Refresher,”

APP 106, ¶ 10, 125 P.3d 1249, 1252 (quoting *Kepler v. Strain*, 1978 OK 52, ¶ 7, 579 P.2d 191, 192).

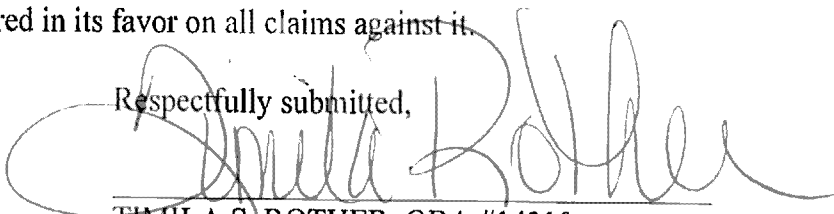
and “2021 Fire Property Claims Quality Plan,” which have nothing to do with Plaintiffs’ claims against the Holcomb Agency for negligent procurement and constructive fraud. *Id.* at ¶¶ 14-15. Nor does the Holcomb Agency have any knowledge or information in its possession relating to these topics. And while the Affidavit insists “Plaintiffs require” discovery on these topics and a few others related to alleged underwriting obligations of the Holcomb Agency to “keep abreast of insured property condition,” which duties the Holcomb Agency showed in its MSJ do not exist as a matter of law, as well as complaints regarding claim handling, it makes no attempt to tie the requested discovery to any undisputed material fact in the Holcomb Agency’s MSJ or show how it “meet[s] [any] issue on which [the Holcomb Agency] contends there is no genuine factual issue.” *Cox*, 2019 WL 1546941 at *3. No claims or issues in the MSJ are even mentioned in the affidavit. This fails the requirements of § 2056(F).

The lack of specificity of Plaintiffs’ request demonstrates that more time for discovery will not change the outcome and suggests the Affidavit was filed for purposes of delay. *See* 12 O.S. § 2056(G) (“If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney fees, incurred as a result.”). Plaintiffs have not met their burden under § 2056(F) and Rule 13(d); therefore, the Court should proceed with ruling on the Holcomb Agency’s MSJ on the record before it. *See Fed. Land Bank of Wichita*, 1990 OK CIV APP 64, ¶ 7, 796 P.2d at 644 (observing “it is not error to deny a continuance in order to afford time to controvert adverse evidence, when ... there was no explanation of the nature of the evidence expected to be adduced if the continuance was granted”); *McClain v. Riverview Vill., Inc.*, 2011 OK CIV APP 57, ¶ 7, 250 P.3d 919, 921 (finding trial court did not err in entering summary judgment where plaintiffs did not provide an affidavit “stating reasons why [they] could not yet present evidentiary material sufficient to

controvert” the undisputed material facts set forth in the motion); *Gutierrez v. Cobos*, 841 F.3d 895, 909 (10th Cir. 2016) (affirming denial of Rule 56(d) motion where, as here, 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 did not meet the requirements of Fed. R. Civ. P. 56(d) where he did not indicate “‘how additional time would allow for rebuttal of [Defendants’] argument for summary judgment’ even if the documents and information requested ... were produced”).

In its Motion to Dismiss, the Holcomb Agency urged that Plaintiffs had no claim against it and that it was joined simply to destroy federal diversity jurisdiction. It has proven this again in its MSJ. Plaintiffs’ failure to pursue discovery against the Holcomb Agency to prosecute their claims confirms it. The Holcomb Agency should never have been made a party to this action, and summary judgment should be entered in its favor on all claims against it.

Respectfully submitted,



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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

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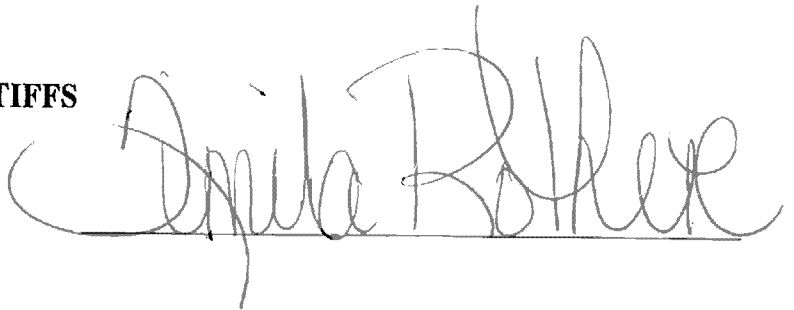
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A handwritten signature in black ink, appearing to read "Blake Sonne", written over a horizontal line.