

IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA

FILED
DISTRICT COURT
COMANCHE COUNTY, OKLAHOMA
July 16, 2026 4:17 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,
CORRECTED TO INCLUDE OMITTED EXHIBIT

TIMILA S. ROTHER, OBA #14310
PAIGE A. MASTERS, OBA #31142
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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-01117-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).

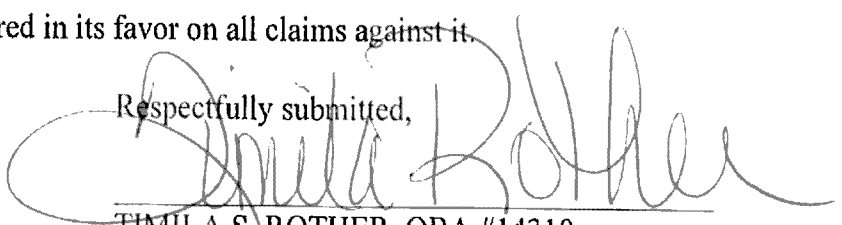
and “2021 Fire Property Claims Quality Plan,” which have nothing to do with Plaintiffs’ claims against the Holcomb Agency for negligent procurement and constructive fraud. *Id.* at ¶¶ 14-15. Nor does the Holcomb Agency have any knowledge or information in its possession relating to these topics. And 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,



TIMILA S. ROTHER, OBA #14310
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**ATTORNEYS FOR DEFENDANT
NANCY HOLCOMB INSURANCE
AGENCY, INC.**

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

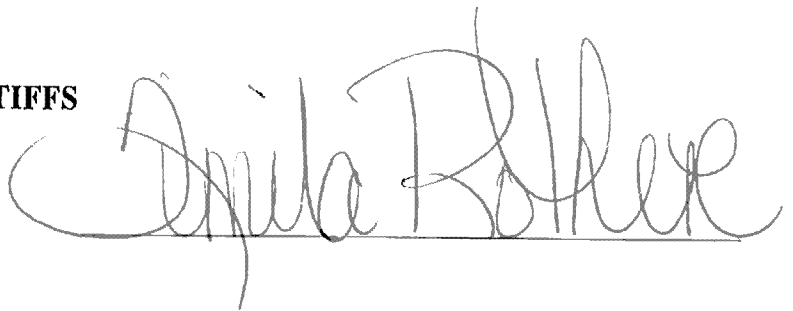
A handwritten signature in cursive script, appearing to read "Angela Boller", written over a horizontal line.

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



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From: Blake Sonne <bsonne@whittenburrage.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@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

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

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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



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From: Blake Sonne <bsonne@whittenburrage.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@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: FW: State Farm - Federal Cases with Deposition Notices for Nicole Manduca

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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

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