

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

CLOVER INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:25-cv-142
	)	
U.S. DEPARTMENT OF HEALTH AND	)	
HUMAN SERVICES, ET AL.,	)	
	)	
Defendants.	)	

**MOTION TO STAY RESPONSE TO  
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Defendants have filed a Motion to Dismiss based on improper venue. Doc. 21. Despite this, Plaintiff Clover Insurance has asked this Court to ignore this potentially dispositive motion and instead grant it summary judgment. Doc. 34. The law is clear: summary judgment is premature when a dispositive motion is pending. Therefore, Defendants ask this Court to stay their response deadline to Clover’s Motion for Summary Judgment or, in the alternative, to deny that Motion as premature. Should the Court ultimately deny Defendant’s Motion to Dismiss, Defendants ask that they be automatically granted the standard 21 days in which to submit a response.

**ARGUMENT**

Clover’s motion for summary judgment is premature. Venue is a “threshold legal issue” that should be decided before the merits. *Varga v. Palm Beach Cap. Mgmt., LLC*, No. 09-82398-CIV, 2010 WL 8510622, at \*1 (S.D. Fla. Sept. 3, 2010) (granting stay when case-dispositive venue and standing issues were raised). Indeed,

it is “*improper* to address the merits of the case prior to resolving the threshold issue of venue.” *Mheid v. Minchew*, No. 1:22-cv-2225, 2023 WL 12208234, at \*1 (N.D. Ga. Sept. 21, 2023) (emphasis added); *see also Ciralsky v. C.I.A.*, 689 F. Supp. 2d 141, 147 (D.D.C. 2010) (district courts “must” consider a defendant’s 12(b)(3) motion before reaching summary judgment motion). This is not a novel legal position: numerous courts have concluded that motions for summary judgment are premature when a motion to dismiss is pending (and before the defendant has answered). *See, e.g., Blumel v. Mylander*, 919 F. Supp. 423, 429 (M.D. Fla. 1996) (describing motion for summary judgment when motion to dismiss was pending “blatantly premature” and a waste of the court’s time); *see also Stubbe v. PHH Mortg. Corp.*, No. CV 22-339, 2022 WL 16842075, at \*1 (S.D. Ala. Sept. 21, 2022) (denying “blatantly premature” motion for summary judgment filed during pendency of motion to dismiss), *report and recommendation adopted*, 2022 WL 16840317 (S.D. Ala. Nov. 9, 2022). The advisory notes to Rule 56 agree: “Although the rule allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time to file a responsive pleading or other pretrial proceedings have been had.” Advisory Committee Notes to Fed. R. Civ. P. 56(b) (2010 Amendments). More broadly, the Eleventh Circuit has noted that a district court’s “[f]ailure to consider and rule on significant pretrial motions before issuing dispositive orders can be an abuse of discretion.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997).

Here, Defendants have filed a Motion to Dismiss, arguing that dismissal is warranted because venue is not proper in the Southern District of Georgia. Doc. 21. The issue is fully briefed. Docs. 22, 25. Defendants have also asked for a stay of discovery pending the Court's decision on the venue issue. Doc. 26. A stay of all deadlines is appropriate while the Motion to Dismiss is pending.

Nevertheless, instead of waiting for a decision, Clover has filed a Motion for Summary Judgment, essentially asking this Court to overlook the flaws in its Complaint and grant it relief without first ascertaining whether the case is properly before it. The issues Clover raises in its Motion for Summary Judgment are separate and distinct from the issues raised in Defendants' Motion to Dismiss.<sup>1</sup> Clover's implicit request that the Court ignore the Motion to Dismiss is improper and its request for summary judgment premature. Indeed, any order on the merits of Plaintiff's Motion for Summary Judgment would amount to an advisory decision if the Court ultimately dismisses the case for improper venue. This Court routinely grants stays of discovery when dispositive motions are pending, since dispositive motions can reduce the scope of the litigation, perhaps significantly. *See, e.g., Rathbun v. Southcoast Med. Grp., LLC*, No. 4:24-cv-148, 2025 WL 3692017, at \*2 (S.D. Ga. Sept. 3, 2025) (Cheesbro, Mag. J.). The same logic applies here: Defendants should not bear the burden of responding to Plaintiff's Motion for Summary Judgment until after their pending Motion to Dismiss is resolved.

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<sup>1</sup> Clover's Motion for Summary Judgment does not reference the issue of venue or make any allegations related to venue, *see generally* Docs. 34, 35, thus evincing no desire to shift the Court's consideration of venue into the summary judgment stage.

Before filing this Motion, undersigned counsel contacted counsel for Clover and requested consent for a stay of Defendants' response. Counsel for Clover declined to consent.

### CONCLUSION

Clover Insurance filed a Complaint in the Southern District of Georgia, a district without proper venue. Nevertheless, it asks this Court to grant it summary judgment without ruling on the venue issue. Because Clover's Motion for Summary Judgment is premature, Defendants ask this Court to stay their response to Clover's Motion until 21 days following a determination on Defendants' pending Motion to Dismiss. In the alternative, Defendants ask this Court to deny Clover's Motion without prejudice.<sup>2</sup>

Respectfully submitted,

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<sup>2</sup> See, e.g., *Smith v. Stewart*, No. 3:24-cv-85, 2025 WL 2380966, at \*1 (S.D. Ga. Aug. 15, 2025) (Bowen, J.) (denying premature motion for summary judgment without prejudice).

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Defendants.	)	

**ORDER**

Defendants have moved to stay their response to Plaintiff's Motion for Summary Judgment until after the Court rules on Defendant's pending Motion to Dismiss for Improper Venue. Upon due consideration and for good cause shown, the Court **GRANTS** Defendants' request. Defendants' response deadline is stayed, and Defendants shall be afforded 21 days in which to respond to Plaintiff's Motion for Summary Judgment after the Court rules on Defendant's Motion to Dismiss.

\_\_\_\_\_  
BENJAMIN W. CHEESBRO  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA