

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SAFECO INSURANCE)	
COMPANY OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 06-1299-MLB
)	
KEITH BILLINGSLY, et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

Before the court are the following:

1. Safeco's motion to withdraw its motion for summary judgment (Doc. 54); and
2. Defendants' response in opposition (Doc. 55).

This case arises out of a tragic incident. On August 18, 2005, Haley Hilderbrand, a 17 year old high school senior, was attacked by a Siberian Tiger at the Lost Creek Animal Sanctuary located in Mound Valley, Kansas. Ms. Hilderbrand died as a result of the attack.

In May 2006, Randy Hilderbrand, Haley's father, filed a wrongful death and survival action in the District Court of Labette County, Kansas. The named defendants were Lost Creek Animal Sanctuary Foundation, Inc., a Kansas corporation, and Doug Billingsly and Keith Billingsly, individuals, doing business as Lost Creek Animal Sanctuary and Animal Entertainment Productions. Thereafter, in October 2006, Safeco filed this case seeking a declaration that a homeowner's insurance policy issued to Keith and Sharon Billingsly provided no coverage for the claims made in the Labette County suit.

In January 2007, Safeco filed a motion for summary judgment

(Docs. 13 and 14). The memorandum in support of the motion consisted of 13 pages and was based upon interpretation and application of policy language. No case law was cited in the memorandum.

Hilderbrand responded in a 17 page memorandum. Hilderbrand argued that the homeowner's policy's business exclusion did not preclude coverage because the incident giving rise to Haley's injuries and ultimate death was not part of any business pursuit of Keith Billingsly, one of the named insured. Apparently based upon information developed at the depositions of Keith, Sharon and Doug Billingsly, Hilderbrand asserted that Lost Creek Animal Sanctuary Foundation and/or Animal Entertainment Productions had little, if any, income and therefore the tiger which mauled Haley was not part of any business pursuit but rather that the tiger was owned individually by Keith and Doug Billingsly.

On December 17, 2007, Safeco filed its reply (Doc. 52) consisting of 43 pages. The court struck the reply because it exceeded the 10 page limit for replies set forth in this court's Standing Order of March 4, 2004. Safeco had not sought leave to file a reply in excess of the page limitation. In the motion presently before the court, Safeco asserts that at the time it filed its motion for summary judgment, it was unaware that the Billingslys would claim that keeping wild animals was a hobby and that Hilderbrand would argue that Billingslys' venture didn't produce income but instead confused income with profit. Safeco claimed that it could not respond to these unforeseen assertions in 10 pages and that if allowed to withdraw its motion for summary judgment and file a new motion, it could stay within the page limits.

Defendants respond that Safeco filed its motion before any meaningful discovery was taken and that defendants have spent "a considerable amount of time and effort in preparing and filing" their response to plaintiff's motion. Defendants argue that if Safeco is allowed to withdraw its motion and resubmit another one, the result will be needless increase in cost and unnecessary delay.

In order to reach a just resolution of this matter, the court will offer Safeco two options: (1) it may withdraw its present motion and resubmit a new motion if it pays defendants' attorney's fees and expenses in connection with preparing the original response to Safeco's motion (Doc. 47) or (2) it may file a reply not to exceed 15 pages. If Safeco elects option (1), it shall notify the court and defendants' counsel on or before February 15, 2008. Defendants shall file a statement of attorney's fees and expenses on or before February 22, 2008, which Safeco must pay no later than February 29, 2008. Safeco's new motion for summary judgment shall be filed on or before March 7, 2008. If Safeco elects option (2), the reply must be filed on or before February 29, 2008.

IT IS SO ORDERED.

Dated this 5th day of February 2008, at Wichita, Kansas.

s/ Monti Belot
Monti L. Belot
UNITED STATES DISTRICT JUDGE