

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DIANNE SWINNEY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 10-2021-CM
)	
STATE FARM FIRE AND CASUALTY)	
COMPANY,)	
)	
Defendant.)	

STATUS CONFERENCE ORDER

On February 8, 2010, the undersigned U.S. Magistrate Judge, James P. O'Hara, conducted an informal telephone status conference to address the motions that remain in this case, mindful of the rulings made earlier the same day by the presiding U.S. District Judge, Carlos Murguia (*see* doc. 176). The plaintiff, Dianne Swinney, appeared through counsel, Darren E. Fulcher, Terrence Revo, and Roger Smith. The defendant, State Farm Fire and Casualty Company, appeared through counsel, James L. Sanders, Brian Boos, Terry R. Guebert, and Christopher J. DeLara.

As stipulated by the parties, the court hereby denies, without prejudice, plaintiff's amended motion to declare applicability of New Mexico law under choice-of-law analysis (*see* doc. 161), as plaintiff withdrew that motion during the status conference. Likewise, as stipulated by the parties, the court hereby denies, without prejudice, defendant's motion for summary judgment with regard to plaintiff's asserted claims under New Mexico law (*see*

doc. 166), as defendant withdrew that motion during the status conference. Both of the above-referenced motions were filed before this case was transferred from the District of Mexico, and hence were briefed in the context of New Mexico's choice-of-law analysis.

By **February 26, 2010**, the parties shall file a *joint* motion which calls upon the court, applying Kansas choice-of-law principles, to decide the narrow issue of whether New Mexico or Kansas substantive law applies to this case. The parties' initial opposing briefs with regard to this joint motion shall be filed within one minute of each other, so that neither party obtains any tactical advantage through delay. Each of the parties shall file their responsive brief by **March 12, 2010**; again, so that neither party obtains any tactical advantage through delay, their responsive briefs shall be filed within one minute of each other. The parties' initial briefs shall be limited to 10 double-spaced pages; the responsive briefs shall be limited to 5 double-spaced pages. No further briefs shall be permitted without leave of court.

The final pretrial conference previously scheduled for February 16, 2010 is cancelled and the parties are relieved of their previously imposed obligation to submit a proposed final pretrial order by February 5, 2010. However, within 14 days of Judge Murguia's ruling on the parties' above-described joint motion, counsel shall confer in good faith and then jointly submit their proposed pretrial order (formatted in WordPerfect 9.0, or earlier version) as an attachment to an Internet e-mail sent to *ksd_ohara_chambers@ksd.uscourts.gov*. The proposed pretrial order shall not be filed with the Clerk's Office. It shall be in the form available on the court's Internet website (*www.ksd.uscourts.gov*), and the parties shall affix

their signatures according to the procedures governing multiple signatures set forth in paragraphs II(C) of the *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases*. Pursuant to Fed. R. Civ. P. 16(e), the court will then schedule the final pretrial conference.

Finally, plaintiff is relieved of her obligation to respond to the show cause order Judge Murguia entered on January 29, 2010 (*see* doc. 172).

IT IS SO ORDERED.

Dated February 9, 2010, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge