

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FIRST MERCURY INSURANCE)	
COMPANY,)	
Plaintiff)	
)	
v.)	C.A. No. 12-cv-30079-MAP
)	
CONNIE'S SILVERBROOK CAFÉ, LLC,)	
CONSTANCE E. D'ANDREA, ANDRE)	
P. D'ANDREA, JOHN DUFOUR, AS)	
ADMINISTRATOR OF THE ESTATE OF)	
ERIN DUFOUR, & PAMELA BALSAMO,)	
Defendants)	

MEMORANDUM AND ORDER REGARDING
CROSS-MOTIONS FOR SUMMARY JUDGMENT
(Dkt. Nos. 31 & 38)

June 27, 2013

PONSOR, U.S.D.J.

Counsel for all parties except Defendant Pamela Balsamo, who has not filed any answer or other responsive pleading, appeared before this court for argument on the cross-motions for summary judgment on June 27, 2013.

The record demonstrates that there are clearly disputed issues of fact regarding the status of the person who served the liquor to Balsamo on the fatal evening, specifically whether that person enjoyed the status of an "employee" or a "volunteer." This distinction, so far as the record indicates at this time, is determinative of coverage in this case. If the individual who served the alcohol was an

employee, coverage is unlikely; if she was a volunteer, it appears that there is coverage. In addition, disputed issues of fact exist as to the impact of the alleged fifteen-day grace period, and the precise significance of the fact that there was a supplemental application in this case. Indeed, during oral argument, it appeared that the absence of a signature on the original application may have rendered that document invalid in some way.

Based on these disputes of fact, Plaintiff's Motion for Summary Judgment (Dkt. No. 31) is hereby DENIED. In addition, the record contains disputed issues of fact regarding the good faith of Plaintiff's investigation of this insurance claim, thereby rendering allowance of Defendants' Cross-Motion for Summary Judgment inappropriate. That motion (Dkt. No. 38) is therefore hereby DENIED, as well.

Following oral argument, counsel provided diverse perspectives on where the case should go following rulings on the pending motions. With this in mind, the court orders counsel to confer and to submit, on or before July 22, 2013, a proposed schedule for completion of all additional pretrial proceedings. In the event that disagreements render a joint proposed schedule impossible, individual proposals may be submitted by the July 22, 2013 deadline.

It is So Ordered.

/s/ Michael A. Ponsor

MICHAEL A. PONSOR

U. S. District Judge