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IN THE U.S. DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

KEVAN FRANCIS and REBECCA)
IVES, Individually, the Natural Parents of)
S.I., Deceased, TIM MULVEY)
and REBECCA IVES, Individually,)
and on Behalf of their Minor Child,)
J. M.,)
)
Plaintiffs,) COMPLAINT
)
vs.)
)
THE UNITED STATES OF AMERICA,)
USDA FOREST SERVICE,)
and JOHN DOES 1-X)
)
Defendants.) Case No.
) Judge

Plaintiffs complain of defendants and for cause of action allege as follows:

1. Plaintiffs are residents of Utah County, State of Utah, and the acts complained of occurred in Utah County, Utah.
2. The defendants The United States of America and USDA Forest Service are governmental entities. Jurisdiction is proper under 28 U.S.C. Section 1346(b).

3. An Administrative claim was presented on September 19, 2007, and has been left without action by the agency for more than six months. Therefore, this action is proper under 28 U.S.C. Section 2675.

4. Venue is proper under 28 U.S.C. Section 1402(b).

5. The amount in controversy in this action, exclusive of interest and costs, is \$2,000,000.00.

BACKGROUND

6. On or about June 17, 2007, Jake Francom and some friends were camping at a campground approximately one mile above Timpanooke Recreational Area in American Fork Canyon, Utah County, Utah.

7. At approximately 5:30 a.m., a black bear came into the camp.

8. The bear raided coolers owned by the campers.

9. The bear then bumped Jake Francom, who was asleep in his tent.

10. Shortly thereafter, the bear ripped open the tent.

11. The bear was chased off by Jake Francom and his friends.

12. That morning, Jake Francom left the campground and immediately notified the Defendant USDA Forest Service of the incident directly and through other Utah State agencies.

13. On or about noon of June 17, 2007, pursuant to written policy, agents of the Utah Division of Wildlife Resources and the Defendant USDA Forest Service came to an agreement that the offending bear was determined to be a Level III nuisance bear, and that the bear must be destroyed.

14. Agents of the State of Utah Division of Wildlife Resources and USDA Forest Service went into the campground area on the afternoon of June 17, 2007 with dogs, and attempted to locate and euthenize the offending bear. .

15. At about 4:00 p.m., agents terminated their search and agreed to begin looking for the bear again in the morning.

16. The Utah Division of Wildlife agents and USDA Forest Service agents left the campground without placing any notices about the Level III bear, or attempting to notify potential users of the campground of the imminent danger presented by the Level III nuisance bear.

17. The USDA Forest Service agents failed to close the campground until any potential attractant or the bear could be removed.

18. The USDA Forest Service agents failed to remove the attractants, or assure that campers with food were kept from coming into the campground.

19. Shortly after the agents abandoned the campground on June 17, 2007, Rebecca Ives, Tim Mulvey, J.M. and S.I. entered the campground and pitched their tent.

20. The family pitched their tent without knowledge or warning that they were pitching their tent in the same location of the Francom tent, and with no knowledge or warning of the bear incident and decisions made by the agents of the USDA Forest Service about the Level III bear that had occurred that very morning.

21. At about 9:00 p.m., the family went to bed.

22. Sometime before midnight, the Level III nuisance black bear re-entered the campground, slit open the Mulvey tent, and grabbed and carried off S.I..

23. S.I. was mortally wounded by the bear.

24. On the following day, the offending bear was immediately located and euthanized.

COUNT I

Negligence of The United States of America

25. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here and further allege as follows:

26. The failure of The United States of America, by and through its agents and employees, includes, but is not limited, to the following:

a. The USDA Forest Service agents left the campground without placing any notices about the Level III nuisance bear, or attempting to notify potential users of the campground of the imminent danger presented by the Level III bear.

b. The USDA Forest Service Agents failed to close the campground and thereby remove any attractants until the bear could be destroyed.

c. The USDA Forest Service agents failed to remove any attractants, or assure that campers with food (attractants) were kept from coming into the campground.

COUNT II

Negligence of the USDA Forest Service

27. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here and further allege as follows:

28. The failure of the USDA Forest Service, by and through its agents and employees, includes, but is not limited, to the following:

a. The USDA Forest Service agents left the campground without placing any notices about the Level III nuisance bear, or attempting to notify potential users of the campground of the imminent danger presented by the Level III bear.

b. The USDA Forest Service agents failed to close the campground and thereby remove any attractants until the bear could be destroyed.

c. The USDA Forest Service agents failed to remove any attractants, or assure that campers with food (attractants) were kept from coming into the campground.

DAMAGES

29. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here and further allege as follows:

30. As a direct and proximate result of the negligence of Defendants the United States of America, by and through its agents and employees, and the USDA Forest Service, by and through its agents and employees, S.I. died on or about June 17, 2007.

31. As a direct and proximate result of S.I.'s death, Plaintiffs have suffered the following losses and damages:

32. The damages sustained by Kevan Francis and Rebecca Ives include, but are not limited to, the loss of love, affection, care, comfort, society, support and companionship of their child, S.I.

33. The family of S.I. has also incurred funeral and burial expenses.

34. The damages sustained by Tim Mulvey and Rebecca Ives, on behalf of their minor child, J.M. include, but are not limited to, the loss of love, affection, care, comfort, society, support and companionship of J.M.'s brother, S.I., and the mental anguish and suffering of having witnessed the event.

WHEREFORE, Plaintiffs pray judgment as follows:

1. For general and special damages in an amount not less than \$2,000,000.00, to be proved at trial;
2. Interest on special damages from July 17, 2007 to the date of judgment herein;
3. For attorneys' fees and costs of suit incurred herein, and
4. For such other and further relief as the Court deems just and proper in the premises.

DATED this 28th day of March, 2008.

YOUNG, KESTER & PETRO


SARAH H. YOUNG
Attorneys for Plaintiffs