

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Miami Division

Howard Adelman and Judith Sclaway-Adelman,
as Co-Personal Representatives of
The Estate of Michael Sclawy-Adelman,

Plaintiffs,

vs.

Boy Scouts of America, a Foreign Corporation;
The South Florida Council Inc.,
Boy Scouts of America;
Plantation United Methodist Church;
Howard K. Crompton, individually; and
Andrew L. Schmidt, individually,

Defendants.

CASE NO.:

District Ct. Judge:

Magistrate Judge:

DEFENDANTS' NOTICE OF REMOVAL

COMES NOW, Defendants, Boy Scouts of America; The South Florida Council, Inc., Boy Scouts of America; Plantation United Methodist Church; Howard K. Crompton and Andrew L. Schmidt ("Defendants") by and through their undersigned counsel and pursuant to Federal Rule of Civil Procedure 11, 28 U.S.C. § 1446, 28 U.S.C. § 1441 and 28 U.S.C. §1332, files their Notice of Removal to this Court and in support thereof, states as follows:

1. This is an action for negligence/wrongful death stemming from an incident that occurred on May 9, 2009, when Michael Sclawy-Adelman allegedly "took part in a 20 mile Boy Scout sanctioned hike through 'The Florida Trail' in the Big Cypress National Park of the Florida Everglades." See Complaint at ¶ 3 and Summons' attached as *Composite Exhibit "A."*
2. The Complaint alleges that Michael died of heat stroke at approximately mile 15 of 20 of the hike. *Exhibit "A" at ¶ 9.*
3. Plaintiffs seek damages pursuant to Florida's Wrongful Death Act (Florida Statute § 768 et. Seq.). *Exhibit "A" at ¶¶ 39, 45, 51, 57, 63, 69, 75, 81, 87, 93, 99, 108 and 117.*
4. This action was brought in the Circuit Court for the 11th Judicial Circuit in and for Miami-Dade County, Florida; Case No.: 10-3234 CA.

I. BASIS FOR JURISDICTION AND REMOVAL:
[28 U.S.C. §1331 and 28 U.S.C. 1441]

5. This Court has original jurisdiction over the case *sub judice*, because negligence claims based on death that occurs on land within the **exclusive jurisdiction** of the United States arise under the laws of the United States, and, United States District Courts have original jurisdiction of all civil actions arising under the laws of the United States. 28 U.S.C. § 1331.
6. This case is removable because any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendants without regard to the citizenship or residence of the parties. 28 U.S.C. § 1441(a) and (b).
7. Because the incident occurred in a territory under the exclusive jurisdiction of the United States of America, removal is proper as this Court has original jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1441(a),(b) by way of 16 U.S.C. § 457 and 16 U.S.C. § 410.

A. THE UNITED STATES HOLDS EXCLUSIVE JURISDICTION OVER THE EVERGLADES

8. The State of Florida ceded the Everglades (approximately two thousand square miles in the region of the Everglades of Dade, Monroe, and Collier Counties) to the United States. *See* 16 U.S.C. § 410.
9. When the Everglades National Park was created in 1934, “Florida ceded exclusive jurisdiction over the entire land area to the United States.” United States v. Daye, III, 696 F.2d 1305, 1307 (11th Cir. 1983); Halpert v. Udall, 231 F.Supp.574, 575 (S.D.Fla. 1964) *see also* 28 U.S.C. § 410, Sec.5(d).
10. The term “Everglades” means the areas within the Florida Water Conservation Areas, Everglades National Park, and Big Cypress National Preserve. Id. at Sec.4(2).
11. Incidents, including death of a person, occurring in a national park are “subject to the exclusive jurisdiction of the United States...” 16 U.S.C. § 457.
12. Thus, the incident occurred in the Everglades as defined by 16 U.S.C. § 410, and exclusive jurisdiction over this incident has been ceded to the United States. Id.; 16 U.S.C. § 457.

B. PLAINTIFFS' CLAIMS ARISE UNDER THE LAWS OF THE UNITED STATES

13. Federal Courts have consistently held that negligence/wrongful death claims *arise under the laws of the United States* when they stem from an injury or death occurring on land within the exclusive jurisdiction of the United States. Pratt v. Kelly, 585 F.2d 692, 694-695 (4th Cir. 1978); Mater v. Holley, 200 F.2d 123 (5th Cir. 1952) Stokes v. Adair, 265 F.2d 662, 665 (4th Cir. 1959); Hodges v. Shell Oil Co., 1997 WL 473809 (E.D.La. 1997); Corley v. Long-Lewis, Inc., 688 F.Supp.2d 1315, 1321 (N.D.Ala. 2010);
14. The rationale is, even though "[a]s a matter of federal law, wrongful death or personal injury actions that arise in a national park or other place subject to the exclusive jurisdiction of the United States are governed by the law of the state in which the federal enclave is located", (Lambert v. B.P Products North America, 2006 WL 924988 (S.D. Ill.); *Citing*, 16 U.S.C. § 457), "[a]ny law existing in territory over which the United States has 'exclusive' sovereignty must derive its authority and force from the United States and is for that reason federal law, even though having its origin in the law of the state within the exterior boundaries of which the federal area is situated." Mater v. Holley, 200 F.2d 123 (5th Cir. 1952); *see also Pratt*, supra, at 695.
15. Therefore, this Court has original jurisdiction, because Florida ceded "exclusive jurisdiction" of the Everglades National Park to the United States, and as a result, Plaintiffs' negligence/wrongful death claims arise under the laws of the United States. *See Stokes*, supra at 665 (finding that the United States District Court for the Eastern District of Virginia had jurisdiction for the cause of action arising from a death occurring on federally owned land in Fort Leavenworth, a territory ceded by Kansas with exclusive jurisdiction to the United States under 16 U.S.C. § 457).

II. BASIS FOR JURISDICTION AND REMOVAL:
[28 U.S.C. §1332]

16. This Court also has original jurisdiction over this case pursuant to 28 U.S.C. 1332(a)(1).
17. “The Boy Scouts of America (“BSA”) is a federally chartered corporation pursuant to 36 U.S.C. §30901. The statute incorporating BSA provides that it is ‘a body corporate and politic of the District of Columbia.’” Doe v. Corp. of The Assoc. of The Presiding Bishop of The Church of Jesus Christ of Latter-Day Saints, 2009 WL 2132722 (D.Or.) (quoting Lehman Bros. Bank FSB v. Frank T. Yoder Mortgage, 415 F.Supp.2d 636, 640 (E.D.Va.2006)); *see also* Patterson v. American Nat. Red Cross, 101 F.Supp. 655, 656 (S.D.Fla.1951).
18. As a federally chartered corporation incorporated in the District of Columbia, Boy Scouts of America is considered a citizen of the District of Columbia for purposes of diversity jurisdiction. The word “States” includes the District of Columbia. 28 U.S.C. 1332(e); *see also* Patterson at 656 (holding that the American National Red Cross, incorporated in the District of Columbia, was a citizen of the District of Columbia, and that there existed diversity of citizenship as would give the Federal District Court jurisdiction.).
19. This Court has original jurisdiction of all civil cases where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, and is between citizens of different states, which includes the District of Columbia. 28 U.S.C. §1332(a)(1).
20. Here, Boy Scouts of America is a citizen of the District of Columbia and the Plaintiff’s have brought a wrongful death action against two individuals and three corporate entities, all of which are Florida citizens. Thus, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and there exists diversity amongst the parties.
21. Therefore, this Court has original jurisdiction over this case under 28 U.S.C. §1332(a)(1).

CERTIFICATION

22. This Notice of Removal is being filed within thirty (30) days of the time when the Defendants first became aware of the facts conferring jurisdiction on this Court, as Plaintiff's state-court Complaint was filed on or about June 8, 2010.
23. The Defendants have filed a copy of this Notice with the Clerk of Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in compliance with 28 U.S.C. § 1446(d). (See *Notice of Filing Notice of Removal*, attached hereto as Exhibit "B").
24. The only other pleadings filed in this matter include responses to the Complaint filed by Boy Scouts of America and The South Florida Council, Inc., Boy Scouts of America, as well as written discovery requests propounded by the Plaintiffs.

WHEREFORE, Defendants, Boy Scouts of America; The South Florida Council, Inc., Boy Scouts of America; Plantation United Methodist Church; Howard K. Crompton and Andrew L. Schmidt, respectfully request that this Court accept jurisdiction over this matter: Howard Adelman and Judith Sclawy-Adelman, as Co-Personal Representatives of The Estate of Michael Sclawy-Adelman v. Boy Scouts of America, et al., case number 10-32346 CA 22, 11th Judicial Circuit, Miami-Dade County, Florida.

By: ___s/Frederick E. Hasty, III _____
Frederick E. Hasty, III, Esq.
Florida Bar No. 260606
FHasty@Wickersmith.com
Wicker, Smith, O'Hara, McCoy,
Graham & Ford, P.A.
Grove Plaza Building, 5th Floor
2900 Middle Street
Miami, FL 33133
Phone: (305) 448-3939
Fax: (305) 441-1745
Attorneys for Defendants, Plantation United
Methodist Church; Howard K. Crompton and
Andrew L. Schmidt.

By: ___s/Kevin D. Franz _____
William. S. Reese, Esq.
Florida Bar No. 187183
wreese@lanereese.com
Kevin D. Franz, Esq.
Florida Bar No. 015243
kfranz@lanereese.com
LANE, REESE, SUMMERS, ENNIS &
PERDOMO, P.A.
2600 Douglas Road
Douglas Centre, Suite 304
Coral Gables, FL 33134
Phone: (305) 444-4418
Fax: (305) 444-5504
Attorneys for Defendants, Boy Scouts of
America and The South Florida Council, Inc.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed July 7, 2010 to:
Mark A. Sylvester, Esq., LEESFIELD & PARTNERS, P.A., 2350 South Dixie Highway, Miami,
FL, 33133; Frederick E. Hasty, Esquire, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A.,
Grove Plaza Building, 5th floor, 2900 Middle Street, Miami, FL, 33133.

By: _____s/Kevin D. Franz_____

William. S. Reese Esq.
Florida Bar No. 187183
wreese@lanereese.com

Kevin D. Franz, Esq.
Florida Bar No. 015243
kfranz@lanereese.com

LANE, REESE, SUMMERS, ENNIS &
PERDOMO, P.A.

2600 Douglas Road
Douglas Centre, Suite 304
Coral Gables, FL 33134

Phone: (305) 444-4418

Fax: (305) 444-5504

Attorneys for Defendants, Boy Scouts of
America and The South Florida Council, Inc.