

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

Miami Division

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

CASE NO. 1:10-cv-22236-ASG

Plaintiffs,

District Ct. Judge: Alan S. Gold

vs.

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

Defendants.

**DEFENDANTS, BOY SCOUTS OF AMERICA and THE SOUTH FLORIDA COUNCIL'S
MOTION FOR PROTECTIVE ORDERS**

COMES NOW, Defendants, Boy Scouts of America, ("BSA") and The South Florida Council, ("SFC") by and through their undersigned counsel, and pursuant to Local Rule 26.1(h)(3); and Federal Rule of Civil Procedure 26(b)(1), (b)(2)(B) and (c); Rule 30 and Rule 34, hereby move for Protective Orders concerning (1) the *Amended Notice of Video-Taped Deposition Duces Tecum of Defendant Boy Scouts of America* and (2) the *Amended Notice of Taking Video-Taped Deposition Duces Tecum of Defendant South Florida Council, Inc. Boy Scouts of America*, and state more fully as follows:

1. This is a wrongful death/negligence action stemming from an incident that occurred on May 9, 2009, when Michael Sclawy-Adelman allegedly died of a heat stroke while taking part in a hike through The Florida Trail in the Big Cypress National Park of the Florida Everglades.
2. The depositions of Boy Scouts of America's Corporate Representatives are scheduled for February 23rd through February 25th of 2011.
3. The depositions for South Florida Council's Corporate Representatives – who have all been identified by name in other Notices of Depositions – are scheduled for February 14th and 18th.

4. Plaintiffs' filed an *Amended Notice of Video-Taped Deposition Duces Tecum of Defendant Boy Scouts of America*. See BSA Amended Notice attached as **Exhibit "A"**
5. Plaintiffs' filed an *Amended Notice of Taking Video-Taped Deposition Duces Tecum of Defendant South Florida Council, Inc. Boy Scouts of America*. See SFC Amended Notice attached as **Exhibit "B."**
6. Counsel for Plaintiffs and the undersigned spoke at length on January 25, 2011 in a good faith attempt to resolve numerous discovery issues. While each side made certain concessions, the parties were unable to reach an agreement to limit the scope of the areas of inquiry and requests made under the Notices. Undersigned attempts to recount all of the concessions and remaining disagreements made by both sides to the best of their recollection. Any inaccuracies are unintentional.
7. Areas of Inquiry 1, 2, 5 and 6 for both Amended Notices are identical. Items 12, 14 and 19 for the BSA Amended Notice, objected to below are identical to items 13, 15 and 20 for the SFC Amended Notice. Thus BSA and SFC move for the same relief as to those identified areas of inquiry.

MEMORANDUM OF LAW

8. Generally, "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. . ." Fed.R.Civ.P. 26(b)(1). "In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. Id. at 30(b)(6). "A deposition notice is sufficiently particular when it is relevant to the case's underlying claims, covers a reasonable period of time, and is narrowly tailored." Astellas Pharma, Inc. v. Impax Laboratories, Inc., Slip Copy, 2009 WL 2392166 at *3 (N.D.Cal. 2009). Similarly, requests for producing documents "must describe with reasonable particularity each item or category of items to be inspected." Fed.R.Civ.P.

34(b)(1)(A). “The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. . .” Id. at 26(c). Courts have broad discretion in this regard and in deciding the degree of protection necessary. Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36; 104 S.Ct. 2199, 2209 (1984).

9. Courts issue protective orders when corporations are asked to respond to overly broad or unfocused Rule 30(b)(6) notices. An overbroad 30(b)(6) notice “subjects the noticed party to an impossible task” because the corporation cannot identify the limits of the matters for examination. Reed v. Bennett, 193 F.R.D. 689, 692 (D. Kan. 2000) (granting in part defendant’s motion to quash or modify notice, which was overbroad and prevented defendant from being able to identify the outer limits of the areas of inquiry noticed.).
10. The two Notices discussed below request materials previously produced, are unduly burdensome and are extremely over broad. Some requests seek records from every Boy Scouts of America employee or representative throughout the Nation as well as information regarding every outdoor scouting activity imaginable. A protective order is necessary to protect BSA and SFC from annoyance, oppression and undue burden and expense.

SCHEDULE A for the BSA and SFC Notices

11. Item 1 of Schedule A requests,

“The corporate representative(s) with the most knowledge of Boy Scout procedures, policies, and guidelines related to outdoor scouting activities, in particular, hiking, trekking, and any other scouting activities involving physical exertion, first aid, medical assistance, emergency preparedness, and communication procedures in case of emergency.”
12. This request is unduly burdensome, unduly expensive, overly broad, vague, ambiguous, harassing, not limited in scope, irrelevant and not described with reasonable particularity.
13. On December 9, 2010, Plaintiffs’ counsel sent a letter outlining the areas of inquiry requested of Boy Scouts of America’s Corporate Representatives for deposition. Plaintiffs’ counsel indicated during the December 29, 2010 Discovery Conference before Judge McAliley that

Counsel for Boy Scouts of America never responded to that letter. That was incorrect. In fact, a written response indicated that the areas of inquiry were too broad and provided a specific, reasonably particular list for the areas of inquiry related to the issues in this case. *See* e-mail correspondence, redacted in part due to relevancy, attached as **Exhibit “C.”** During the hearing, counsel for Boy Scouts of America commented that all “outdoor” activities was unreasonable, since the Boy Scouts of America offers merit badges in over 120 activities, many of which are outdoor related yet has nothing to do with the issues in this case (e.g. archery, space exploration, oceanography, golf).

14. Nevertheless, as indicated during the December 29, 2010 Discovery Conference, counsel for Boy Scouts of America would again write to Plaintiffs’ counsel indicating the relevant areas of inquiry. Counsel did so the next day. *See* letter attached as **Exhibit “D.”**
15. The areas of inquiry in Item 1 of schedule A are not listed with reasonable particularity and are not sufficiently limited in scope. The only areas of inquiry relevant to the issues in this case are hiking, trekking and first aid procedures. “Outdoor activities,” “other scouting activities involving physical exertion” are over broad. Archery, for example, is an outdoor activity that involves physical exertion and has nothing to do with this case.
16. Plaintiffs were willing to concede that (in terms of “emergency preparedness”) deposing a representative with knowledge of community-related emergencies is unnecessary. Plaintiffs agree that the area of inquiry should be limited to first aid emergencies.¹

¹ Boy Scouts of America has two areas in its organization related to emergency situations: (1) first aid emergencies and (2) community-related emergencies. For example, the merit badge for emergency preparedness focuses on flash floods, tornados, snowslides, etc. When a merit badge incidentally mentions first aid procedures, the discussion is repetitive of the more detailed discussion contained in the first aid merit badge. There are no facts in this case concerning “community-related” emergency situations. The only emergency at issue took place during the hike. Thus, the parties agree that “emergency situations” is limited to first aid emergencies.

17. Thus, Item 1 of schedule A should be limited to the person with most knowledge of hiking, trekking and first aid.
18. Item 2 of Schedule A requests,

“The corporate representative(s) who formulates, is responsible for, and enforces organization’s procedures, policies and guidelines related to each of the areas mentioned in Item # 1 and who is most knowledgeable regarding same.”
19. BSA and SFC object based on the same reasons in paragraphs 12-17 above and request the same relief.
20. Item 5 of Schedule A requests,

“The corporate representative(s) with the most knowledge and information on the process, procedures, or guidelines of communicating rules, regulations and procedures related to: (1) hiking and/or trekking activities and (2) rescue, safety, and emergency procedures.
21. As long as Plaintiffs agree to limit “rescue, safety and emergency procedures” to first-aid emergencies as discussed above, neither BSA nor SFC object.
22. Item 6 of Schedule A requests,

“The corporate representative(s) who formulates, is responsible for and enforces all health, safety, and emergency policies, procedures and guidelines, and is most knowledgeable regarding same.
23. As long as Plaintiffs agree to limit “rescue, safety and emergency procedures” to first-aid emergencies as discussed above, neither BSA nor SFC object.
24. Item 12 of BSA Schedule A and Item 13 of SFA Schedule A requests,

“All claims and/or lawsuits asserted against the Boy Scouts for injuries and/or deaths related to outdoor scouting activities, in particular, hiking, tracking, camping and any other Scouting activities involving physical exertions or exposure to heat and elements from the year 2004 to the present.”
25. BSA and SFC agree to produce a representative with knowledge of lawsuits concerning heat-related serious illnesses and/or deaths stemming from hiking activities within the past five years. Plaintiffs agree to the five year limitation; however, Plaintiffs maintain that the remainder of the area of inquiry is appropriate.

26. BSA and SFC also object based on the same reasons in paragraphs 12-17 above and request the same relief.
27. Item 14 of BSA Schedule A and Item 15 of SFC Schedule A requests,
- “All internal investigations, analysis, research and studies performed by the Boy Scouts of America and/or their agents, employees or representatives relating in any manner to the heat related occurring during the 2005 Jamboree as well as any changes in the Boy Scouts procedures, policies or guidelines considered as a result thereof.”
28. BSA and SFC object to the request based on the same reasons in paragraphs 12-17. They further object in that the 2005 Jamboree is beyond the scope of the requested deponents and the issues in this lawsuit, which concern hiking as opposed to a Jamboree. They further object to the term “internal investigations.” It appears that Plaintiffs may be seeking one with knowledge of work product protected material and the mental impressions of that individual as it relates to investigations in anticipation of litigation.
29. Therefore, BSA and SFC request that this area of inquiry be stricken.
30. Item 19 of BSA Schedule A and Item 20 of SFC Schedule A requests,
- “The facts and circumstances surrounding and related to all other scouts, who died or who required medical assistance, as a result of exposure to heat or dehydration while performing any outdoor Boy Scout activities from 2004 to present.”
31. BSA and SFC object based on the same reasons in paragraphs 12-17 above and request the same relief.
32. Plaintiffs agree to limit the area of inquiry to scouts who died or who required medical assistance (from a doctor or EMT) as a result of exposure to heat or dehydration while performing any outdoor activity. However, BSA and SFC seek to limit this to the past five years and to heat related serious illnesses or death stemming from a hike.

SCHEDULE B for the BSA and SFC Notices

33. Items 1-12 both Notices are identical except for interchanging the names Boy Scouts of America and South Florida Council. Thus, BSA and SFC move for the same relief concerning those requested documents.
34. Item 1 of Schedule B requests,
- “All non-privileged correspondence between Boy Scouts of America and any other defendant in this action which is related to items 1-8 of Schedule A.”
35. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature. BSA and SFC object based on the same reasons in paragraphs 12-17 above and requests the same relief.
36. Item 2 of Schedule B requests,
- “All non-privileged correspondence between Boy Scouts of America and Troop 111 which is related to items 1-8 of Schedule A.”
37. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature. BSA and SFC object based on the same reasons in paragraphs 12-17 above and requests the same relief.
38. Item 3 of Schedule B requests,
- “All non-privileged correspondence between Boy Scouts of America and Plantation United Methodist Church which is related to items 1-8 of Schedule A.”
39. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature. BSA and SFC object based on the same reasons in paragraphs 12-17 above and requests the same relief.
40. Item 4 of Schedule B requests,
- “All materials provided w[h]ether directly or indirectly to Troop 111 by Boy Scouts of America which relate to items 1-8 of Schedule A.”

41. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature. BSA and SFC object based on the same reasons in paragraphs 12-17 above and requests the same relief.
42. Item 5 of Schedule B requests,
- “All materials provided to South Florida Council by Boy Scouts of America which relate to items 1-8 of Schedule A.”
43. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature. BSA and SFC object based on the same reasons in paragraphs 12-17 above and requests the same relief.
44. Item 6 of Schedule B requests,
- “All materials provided by South Florida Council, whether directly or indirectly, to Crompton or Schmidt which relates to items 1-8 of Schedule A.”
45. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature. BSA and SFC object based on the same reasons in paragraphs 12-17 above and requests the same relief.
46. Item 7 of Schedule B requests,
- “All materials provided to Crompton or Schmidt which relates to items 1-8 of Schedule A.”
47. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature. BSA and SFC object based on the same reasons in paragraphs 12-17 above and requests the same relief.
48. Item 12 of Schedule B requests,
- “The cell phone record for May 9, 2009, for any employee, officer, manager, agent or representative of Boy Scouts of America which reflects: calls to or from any defendant in this case, calls to or from any employee, agent or representative of any defendant, calls to or from the National Park Service, calls to or from any law enforcement personnel, calls to or from any other person or entity which are in any way or manner whatsoever related to the incident at issue in this case.”

49. This request is unduly burdensome, vague, ambiguous, harassing, not limited in scope, not listed with reasonable particularity, not likely to lead to the discovery of admissible evidence, and represents a fishing expedition.
50. Boy Scouts of America has thousands employees, officers, managers, agents and/or representatives in its nationwide organization. Plaintiffs' counsel, through his December 9, 2010 letter, requested the same documentation. Plaintiff cannot expect Boy Scouts of America to contact every single employee or potential representative and request that they obtain cell phone records for May 9, 2009. That is the definition of a fishing expedition, it is an impossible task and it is not reasonably calculated to lead to the discovery of admissible evidence.
51. BSA and SFC do agree that any phone record of contacts made by or with decedent or his parents on May 9, 2009 is reasonably limited in scope and may lead to the discovery of admissible evidence in this case.
52. Plaintiffs only agree to limit the request to those phones that are paid for by Boy Scouts of America. Boy Scouts could spend years inquiring into all scouting organizations through the United States of America learning whose phone bills are paid for by Boy Scouts. That is the definition of burdensome and harassing.
53. BSA and SFC respectfully request Item 12 to be limited to records of contacts made by or with decedent or his parents on May 9, 2009.

SCHEDULE B for the SFC Notice: Requests 13-29

54. The SFC Notice includes requests 13-29, which are not included in the BSA Notice.
55. Item 19 of Schedule B requests,

“Any and all documentation, correspondence, memoranda, records or notes regarding complaints made by any individual, entity or agency (whether public or private relative to boy scout hikes for the past 10 years.”

56. This request is unduly burdensome, unduly expensive, overly broad, vague, ambiguous, harassing, not limited in scope, irrelevant and not described with reasonable particularity.
57. This request is nothing more than a fishing expedition. South Florida Council asserts that the request should be limited to documentation regarding lawsuits brought by an individual over the past 5 years concerning heat-related serious illness or death stemming from hikes.
58. Plaintiffs would not change the request other than to limit it to the past five years. That insufficiently limits the scope.
59. Item 25 of Schedule B requests,
- “A copy of any and all complaints filed in any court of law against South Florida Council relative to scouts injured or killed on boy scout related hikes over the past 10 years.”
60. This request is nothing more than a fishing expedition. South Florida Council asserts that the request should be limited to documentation regarding lawsuits brought by an individual over the past 5 years concerning heat-related serious illness or death stemming from hikes.
61. Plaintiffs would not change the request other than to limit it to the past five years. That insufficiently limits the scope.

WHEREFORE, DEFENDANTS, BOY SCOUTS OF AMERICA and SOUTH FLORIDA COUNCIL respectfully request that this Honorable Court enter a Protective Order as to the two Amended Notices of Deposition Duces Tecum (Exhibits A and B). Defendant requests the following relief:

1. Items 1 and 2 in Schedule A to the BSA and SFC Amended Notices are limited to hiking, trekking and first aid.
2. Items 5 and 6 in Schedule A to the BSA and SFC Amended Notices are limited to first aid emergency situations.
3. Item 12 of BSA Schedule A and Item 13 of SFC Schedule A is limited to heat-related serious illnesses and/or deaths stemming from hiking activities within the past five years.
4. Item 14 of BSA Schedule A and Item 15 of SFC Schedule A is stricken.

5. Item 19 of BSA Schedule A and Item 20 of SFC Schedule A is limited scouts who died or who required medical assistance from a doctor or EMT as a result of heat-related serious illnesses and/or deaths stemming from hiking activities within the past five years.
6. Items 1, 2, 3, 4, 5, 6 and 7 in Schedule B to the BSA and SFC Amended Notices are limited to hiking, trekking and first aid.
7. Item 12 in Schedule B to the BSA and SFC Amended Notices is limited to phone records of contacts made by or with Michael Sclawy-Adelman or his parents on May 9, 2009.
8. Item 19 in Schedule B to the SFC Amended Notice is limited to lawsuits concerning heat-related serious illnesses and/or deaths stemming from hiking activities in the past five years.
9. Item 25 in Schedule B to the SFC Amended Notice is limited to lawsuits concerning heat-related serious illnesses and/or deaths stemming from hiking activities in the past five years.

CERTIFICATION OF GOOD FAITH

Pursuant to Local Rule 7.1(a)(3) counsel for the movant has conferred with counsel for the Plaintiffs who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent February 2, 2011 to:
Robert D. Peltz, Esq, Ira H. Leesfield, 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., 2800 Ponce de Leon Boulevard, Suite 800, Coral Gables, FL 33134; Greg Gaebe, Esq., Devang Desai, Esq., Gaebe, Mullen Antonelli, Esco & DiMatteo, 420 S. Dixie Highway, Third Floor, Coral Gables, FL, 33146.

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