

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 10-CV-22236-ASG

HOWARD ADELMAN AND JUDITH SCLAWY  
as Co-Personal Representatives of the  
ESTATE OF MICHAEL SCLAWY-ADELMAN,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA; et al

Defendants.

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**PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM THE BOY SCOUTS OF  
AMERICA AND SOUTH FLORIDA COUNCIL, INC.**

Plaintiffs, HOWARD ADELMAN AND JUDITH SCLAWY, respectfully move for the entry of an Order compelling discovery from the Boy Scouts of America and South Florida Council, Inc., Boy Scouts of America and state:

1. In response to the identical initial Request for Production served upon both Defendant Boy Scouts of America and Defendant South Florida Council, these Defendants objected to items number 1, 3, 4, 9 and 10 and provided incomplete and/or unresponsive answers to items 2, 5, 6, 7, 8, 12, 13, 14, 15, 18 and 19.

2. Counsel for the parties conferred and reached partial agreement on a number of these requests. Defendants agreed to provide better responses to items 1, 2, 3, 4, 17 and 18, and have clarified their responses to items 5 through 8 and 12 through 15. See correspondence between the parties attached as **Composite Exhibit 1**. Pending the determination of the sufficiency of the Defendants' supplemental responses to the above items, request numbers 9, 10 and 16 remain in dispute. See individual discovery requests still in dispute attached as **Exhibit 2**.

3. Plaintiffs' minor son, Michael Sclawy-Adelman, died during a 20 mile Boy Scout

sanctioned hike in the Big Cypress National Preserve while under the care and supervision of two Boy Scout approved Scoutmasters. Among the issues raised by this litigation and alleged in the Plaintiffs' pleading are the Defendants':

- Failure to adopt and implement adequate guidelines for the planning, preparation, and conduct of Boy Scout hikes;
- Failure to adopt and implement adequate guidelines for recognizing and responding to emergency situations on Boy Scout hikes;
- Failure to adopt and implement adequate guidelines and standards for the selection of Scoutmasters;
- Failure to adopt and implement adequate policies, protocols, and procedures for the planning, preparation, and conduct of Boy Scout hikes;
- Failure to adopt and implement adequate policies, protocols, and procedures for recognizing and responding to emergency situations of Boy Scout hikes;
- Failure to adopt and implement adequate policies, protocols, and procedures for the selection of Scoutmasters;
- Failure to provide proper instruction and training to local councils, charter organizations, districts, and troops relative to the planning, preparation, and conduct of Boy Scout hikes;
- Failure to provide proper instruction and training to local councils and charter organizations, districts, and troops relative to recognizing and responding to emergency situations on Boy Scout hikes;
- Failure to provide proper instruction and training to local councils and charter organizations, districts, and troops relative to the selection of Scoutmasters;
- Failure to provide adequate and proper instruction and training to Scoutmasters relative to the planning, preparation, and conduct of Boy Scout hikes;
- Failure to provide adequate and proper instruction and training to Scoutmasters relative to recognizing and responding to emergency situations on Boy Scout hikes;
- Failure to provide adequate and proper supervision to local councils, charter organizations, troop units, and Scoutmasters relative to the planning, preparation, and conduct of Boy Scout hikes;
- Failure to provide adequate and proper supervision to local councils, charter organizations, troop units, and Scoutmasters relative to recognizing and responding to emergency situations

on Boy Scout hikes;

- Failure to provide adequate and proper supervision local councils, charter organizations, relative to the selection of Scoutmasters;
- Failure to properly review and evaluate the performance of Scoutmasters;
- Failure to properly plan and prepare for this hike;
- Failure to obtain proper and adequate weather information;
- Failure to properly conduct the activity;
- Failure to take the appropriate steps to prevent, recognize, combat and deal with heat related problems during the hike;
- Failure to have proper equipment for the hike; and
- Improperly selecting, evaluating, training and retaining the Scout Masters running the hike.

4. With respect to **Request No. 9:** This request for production is not overbroad, but rather, is directly related and relevant to the issues raised in the Amended Complaint. Policies, procedures, guidelines, etc. which the Boy Scouts may have created, promulgated and/or implemented for the safety of boy scouts with respect to any exertional or outdoor activities would be highly relevant to the issues in this case, if for example, those policies, procedure, guidelines, etc. were not created, promulgated and/or implemented or followed for all such scouting activities where children are potentially at risk. See e.g., *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399 (S.D. Fla. 2008). *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982); *Panola Land Buyers Ass'n. v. Shuman*, 762 F.2d 1550, 1559 (11<sup>th</sup> Cir. 1985); *Abdin v. American Security Ins. Co.*, 2010 WL 1257702 \* 2 (S.D. Fla. March 29, 2010); *Benfatto v. Wachovia Bank, N.A.*, 2008 WL 4938418 \*2 (S.D. Fla. Nov. 19, 2008).

5. The Boy Scout Defendants' contend that the Plaintiffs' discovery must be solely limited to "hiking" activities, first aid, and/or merit badges is clearly unsupportable under the broad and liberal standards governing discovery. The policies, procedures, guidelines, and any other documentation related to the training, selection, evaluation and retention of Scoutmasters who hold

the safety and lives of children in their hands during all exertional and outdoor activities are relevant and may lead to admissible evidence.

6. The Plaintiffs contend that appropriate and adequate policies, procedures, and guidelines should be in place to ensure the safety and well being of the children participating in scouting activities and that those policies, procedures, guidelines, etc. should be consistent across all exertional and/or outdoor scouting activities, not just hiking. Children participating in all exertional and/or outdoor scouting activities are equally at risk for serious injury or death due to heat stroke or exposure to the elements, regardless of whether they are biking, camping, trekking or attending a jamboree as reflected by the news article attached as **Exhibit 3** relating to hundreds of cases of heat related injuries occurring during the 2005 National boy Scout Jamboree. *See e.g., Hessen v. Jaguar Cars, Inc.*, 915 F.2d 641, 650 (11<sup>th</sup> Cir. 1990)(citing *Jones v. Otis Elevator Co.*, 861 F.2d 655, 661 (11<sup>th</sup> Cir. 1988)); *Pinchinat v. Graco Children's Products, Inc.*, 2005 WL 5960928 \* 2 (M.D. Fla. April 7, 2005). *See also Dollar v. Long Mfg., N.C., Inc.*, 561 F.2d 613, 617 (5<sup>th</sup> Cir. 1977); *Josephs v. Harris Corp.*, 677 F.2d 985 (3d Cir. 1982); *Sumner v. Biomet, Inc.*, 2009 WL 3064615 (M.D. Georgia Sept. 17, 2009).

7. Furthermore, a crucial issue in this case is the amount of involvement and/or control the Boy Scout Defendants have and/or may exercise with respect to the charter organizations, the local councils, and the troop level Scoutmasters and the actual troop activities. The South Florida Council contends that neither it nor the Boy Scouts of America have any involvement or control over what occurs at the Scoutmaster and/or Troop level of the organization and went to great lengths in their Motion to Dismiss Counts VII and VIII (DE 5) to argue that position.<sup>1</sup>

Plaintiffs are entitled to discovery which will lead to admissible evidence related to the control and participation issues. The discovery sought in Request No. 9 may well reflect the fallacy of the Boy Scouts' position.

8. With respect to **Request 10,16 and Interrogatories 9 and 10**: Plaintiffs believe that

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<sup>1</sup> After a hearing on that motion, Judge Gold denied the Boy Scouts of America's and the South Florida Council's motions to dismiss.

there have been numerous prior incidents resulting in injuries (which required medical care) and/or deaths to Boy Scouts while the boys were participating in outdoor scouting activities. Complaints regarding those incidents are highly relevant to the Boy Scout Defendants' subsequent implementation of safety policies, procedures and training, or the lack thereof.

9. Based upon information available in the media, the Plaintiffs contend that at least 32 scouts and Scout leaders have died in the past five years in various outdoor activities, including deaths from heatstroke, falls, lightening, drowning, electrocution and burns, among other causes. The Boy Scouts zealously try to guard and keep secret information regarding these deaths, and non-death injuries. Information related to any such complaints is highly relevant to the issues in this case.

10. All of the discovery the Plaintiffs seek in the disputed requests are relevant to the issues raised in the Amended Complaint and are permissible discovery under the Federal Rules of Civil Procedure. For these reasons the Plaintiffs respectfully request that the Court grant their motion and enter an Order compelling production from Boy Scouts of America and The South Florida Council.

Respectfully submitted,

/s/ Robert D. Peltz

**ROBERT D. PELTZ**

Florida Bar No. 220418

LEESFIELD & PARTNERS, P.A.

*Counsel for Plaintiffs*

2350 South Dixie Highway

Miami, FL 33133

Telephone: 305-854-4900

Facsimile: 305-854-8266

e-mail: [peltz@leesfield.com](mailto:peltz@leesfield.com)

#### **CERTIFICATE OF GOOD FAITH CONFERENCE**

I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues raised in the motion but was unable to resolve the issues after reasonable efforts.

/s/ Robert D. Peltz

**ROBERT D. PELTZ**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 4, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Robert D. Peltz

**ROBERT D. PELTZ**

**SERVICE LIST**

**HOWARD ADELMAN AND JUDITH SCLAWY-ADELMAN**

**VS.**

**BOY SCOUTS OF AMERICA, et al**

**CASE NO.: 10-CV-22236-ASG**

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

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Andrew L. Schmidt***WILLIAM S. REESE****WILLIAM SUMMERS****KEVIN D. FRANZ**LANE, REESE, SUMMERS, ENNIS &  
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South Florida Council, Inc.; Boy Scouts of  
America***GREG M. GAEBE**

GAEBE, MULLEN, ANTONELLI &amp; DiMATTEO

420 South Dixie Highway, 3<sup>rd</sup> Floor

Coral Gables, FL 33146

305-667-0223

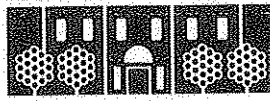
305-284-9844 – Fax

Email: [ggaebe@gacbemullen.com](mailto:ggaebe@gacbemullen.com)*Attorneys for Plantation United Methodist  
Church*

# **Composite Exhibit    1**



TRIAL LAWYERS



LEESFIELD  
& PARTNERS

January 19, 2011

William S. Reese, Esquire  
Lane Reese Summers Ennis  
& Perdomo, P.A.  
Suite 304, Douglas Centre  
2600 Douglas Road  
Coral Gables, FL 33134

IRA H. LEESFIELD  
Board Certified Civil Trial Lawyer

PATRICIA M. KENNEDY

**Re: Estate of Michael Sclawy-Adelman v. Boy Scouts of America, et al.**  
**Your File No. 40756**

MARK A. SYLVESTER

Dear Mr. Reese:

THOMAS SCOLARO

I am writing pursuant to both the Local Rules as well as the Federal Rules of Civil Procedure to request better answers to the following interrogatories, which were originally served on your client, the Boy Scouts of America:

ALEXANDER J. PERKINS  
Also Admitted in District of Columbia

7. This interrogatory which requests an identification of those individuals who have knowledge of, possession, custody or control of various specific items of evidence was objected to on the grounds of work product privilege. Not only did your responses fail to include the required privilege log, but this request is taken verbatim from the standard approved interrogatories appended to the Florida Rules of Civil Procedure. Since both the Federal and Florida Rules are generally interpreted in the same manner, the information sought by this interrogatory is clearly not privileged. Accordingly, I am writing to request that you provide us with a full and complete response to this interrogatory.

Reply to Miami Office only:  
2350 South Dixie Highway  
Miami, Florida 33133  
305/854-4900  
800/836-6400  
Fax: 305/854-8266  
E-mail: Info@Leesfield.com  
Internet: www.Leesfield.com

Key West:  
615 1/2 Whitehead Street  
Key West, Florida 33040

South Beach:  
1111 Lincoln Road  
Miami Beach, Florida 33139

Winter Park/Orlando:  
Of Counsel  
Bounds Gonzalez  
222 W. Comstock Avenue  
Suite 215  
Winter Park, Florida 32789

9. This interrogatory seeks information regarding the existence of lawsuits involving your client relating to allegations of negligence resulting in injuries or death to Scouts while participating in hikes and hiking activities. Clearly, the existence of such prior incidents are not only discoverable, but generally admissible in evidence. Even to the extent that they are not admissible, they are certainly calculated to lead to the discovery of admissible evidence, particularly to the extent that such claims involve the failure to properly plan, prepare and conduct such activities, the failure to obtain proper and adequate weather information, the improper selection, evaluation, training and retention of scout masters, the failure to utilize the proper equipment for hiking, the failure to take the appropriate steps to

**LEESFIELD  
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William S. Reese, Esquire

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prevent, recognize, combat and deal with heat related ailments, the failure to promulgate appropriate policies and procedures, the failure to take the appropriate actions to insure that existing policies and procedures are followed and the failure to properly plan for such activities and which are all issues in this case. Despite the fact that you have not indicated that your client would be unable to obtain this information in a reasonable fashion, I am willing to discuss a shorter time period than set forth in the interrogatory and other potential limitations with you.

10. Once again, this interrogatory seeks the same type of information concerning prior law suits arising out of other outdoor activities, which involve the same types of issues and claims as in this case, including those specific claims and issues identified in the paragraph above.

11. Rather than answering this interrogatory, you merely responded by stating that "BSA has no first hand knowledge of this information." As you are aware, a party's obligation to answer interrogatories is not limited to situations where it has merely first hand knowledge. Accordingly, we are entitled to a response to this interrogatory as well.

Please also promptly provide a properly executed jurat page for your client's answers to interrogatories, since that has not been done.

Please give me a call after you have had the opportunity to review my comments, so that we can attempt to reach an amicable resolution without having to involve the Court or Magistrate. If I do not receive a response from you prior to January 24, I will assume that you are not willing to provide the requested better answers and will proceed forward accordingly.

Sincerely,



ROBERT D. PELTZ  
RDP/bl



January 19, 2011

William S. Reese, Esquire  
Lane Reese Summers Ennis  
& Perdomo, P.A.  
Suite 304, Douglas Centre  
2600 Douglas Road  
Coral Gables, FL 33134

IRA H. LEESFIELD  
Board Certified Civil Trial Lawyer

PATRICIA M. KENNEDY

**Re: Estate of Michael Sclawy-Adelman v. Boy Scouts of America, et al.**  
**Your File No. 40756**

MARK A. SYLVESTER

Dear Mr. Reese:

THOMAS SCOLARO

I am writing pursuant to the applicable Local Rules and Federal Rules of Civil Procedure in a good faith effort to resolve your objections to the Plaintiffs' initial Request for Production directed to South Florida Council. Accordingly, I am writing to request better responses to the following items:

ALEXANDER J. PERKINS  
Also Admitted in District of Columbia

1. This is a basic request for documents that is routinely asserted in virtually all litigation in this state. The fact that materials may have been "compiled" or "gathered" by counsel following the filing of this suit, does not somehow make them privileged. For example, if an attorney requests a copy of the police report from an incident, the fact that it is requested by the attorney following the filing of suit does not somehow make this document privileged from discovery.

Reply to Miami Office only:  
2350 South Dixie Highway  
Miami, Florida 33133  
305/854-4900  
800/836-6400  
Fax: 305/854-8266  
E-mail: Info@Leesfield.com  
Internet: www.Leesfield.com

Key West:  
615 1/2 Whitehead Street  
Key West, Florida 33040

South Beach:  
1111 Lincoln Road  
Miami Beach, Florida 33139

Winter Park/Orlando:  
Of Counsel  
Brouns Gonzalez  
222 W. Comstock Avenue  
Suite 215  
Winter Park, Florida 32789

It is impossible to tell from the generic descriptions contained in your privilege log whether the claimed privileges are in fact valid. For example, your first item refers to a "narrative report of fatal or serious injury or illness and related documents." Nevertheless, there is no indication as to who prepared this report, whether it was prepared in anticipation of litigation and what the "related documents" consist of.

Therefore, I am writing to request a full and complete response to item no. 1 as well as a more detailed privilege log (as to all of the items), indicating at a minimum: (1) The preparer of each document upon which a privilege is claimed; (2) the purpose for which the document was prepared, and (3) a specific description of all documents upon which a privilege is claimed that

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is sufficient to allow both Plaintiff's counsel and the court to determine whether or not a valid privilege applies.

2. Although you have responded to this request for copies of all insurance policies providing coverage to your clients by indicating that copies of the policies providing "the primary and first level of excess coverages" have been provided, you have not produced copies of any insurance providing additional coverage beyond these policies. In the event that there is no such additional coverage, please indicate as such. Otherwise, please produce copies of these policies.

3. If you are claiming that the Plaintiffs made statements to the media upon which you are relying in this case, we are entitled to copies of the articles and/or statements. As to any additional statement upon which you are claiming a privilege, we are entitled to an identification of those statements, so that a determination can be made as to whether the claimed privilege is valid or has been waived.

4. Although certain investigative materials may be work product, others may not. As noted above, it is impossible to tell from your privilege log exactly what materials you have coming within the description of the request, the preparer of the materials, the source of the information and the reasons for their preparation, which are all necessary to determine the validity of your claim of privilege. Accordingly, we are once again reiterating our request for a more complete privilege log, which will be sufficient to allow both Plaintiff's counsel and the Court to determine the validity of your privilege claims.

5-8 and 12-15. It cannot be determined from your response to these items whether the documents produced are the only ones in your client's possession meeting the request. If this is the case, please advise us. Otherwise, please produce any additional documents meeting these descriptions.

9. The Plaintiff is clearly entitled to copies of all Boy Scout guidelines, training manuals, check lists, policies, procedures, handbooks and manuals, whether in written, videotaped or computerized form, that relate to the instruction, guidance and training of Scout Masters with reference to any

**LEESFIELD  
& PARTNERS**

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of the issues in this case. Since the Plaintiffs' complaint asserts claims based upon the following activities, we are at the very least entitled to the above-described materials relating to the following:

- Planning and properly preparing for hiking and other outdoor activities
- Properly conducting hiking and other outdoor activities
- Obtaining proper and adequate weather information
- Participating in hiking and other similar activities
- Leading scouts during hiking and other outdoor activities
- Recognizing, combating and dealing with the signs and symptoms of heat exhaustion, heat stroke and similar conditions,
- Proper and necessary equipment for hiking and outdoor activities
- Proper and adequate equipment for handling emergencies during outdoor scouting activities
- The selection of Scout Masters
- The training of Scout Masters
- The instruction and training of Local Council and Troops relative to the planning, preparation and conduct of Boy Scout hikes and other outdoor activities, recognizing and responding to emergency situations on Boy Scout hikes and other outdoor activities, the selection of Scout Masters and the review and evaluation of the performance of Scout Masters.

As such, we are not limited to receipt of the few selected handbooks which you have chosen to identify, but are instead entitled to a full and complete response to this request.

10. This request seeks information regarding the filing of lawsuits and/or the other written assertion of claims or complaints to your client relating to allegations of negligence resulting in injuries or death to scouts while participating in hikes and hiking activities. Clearly, the existence of such prior incidents are not only discoverable, but generally admissible in evidence. Even to the extent that they are not admissible, they are certainly calculated to lead to the discovery of admissible evidence, particularly to the extent that such claims involve the failure to promulgate appropriate policies and procedures, the failure to take the appropriate actions to insure that existing policies and procedures are followed, proper training, failure to properly plan for such activities and other matters spelled out regarding

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& PARTNERS**

William S. Reese, Esquire  
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item 9 above, which are all issues in this case. Despite the fact that you have not indicated that your client would be unable to obtain this information in a reasonable fashion, I am willing to discuss a shorter time period than set forth in the interrogatory and other potential limitations with you.

17.-18. We are entitled to a response to this request from the Defendant Boy Scouts of America.

Please give me a call after you have had the opportunity to review my comments, so that we can attempt to reach an amicable resolution without having to involve the Court or Magistrate. If I do not receive a response from you prior to January 24, I will assume that you are not willing to provide the requested better answers and will proceed forward accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Peltz', with a horizontal line extending to the right.

ROBERT D. PELTZ  
RDP/bl

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

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ADMIRALTY & MARITIME LAW  
C. PAGE LANE  
OF COUNSEL

January 26, 2011

Robert Peltz  
Patricia Kennedy  
Leesfield & Partners  
2350 S Dixie Hwy  
Miami, FL 33133

RE: Adelman, Howard & Judith Sclawy as Co-PR/Michael Adelm v BSA  
Our File No. :40756

Dear Bob and Patricia:

It was a pleasure speaking with you yesterday in an attempt to work out discovery disputes. This represents what we agreed upon and what we could not agree upon. If this does not represent your understanding of our conversation, please let me know.

**Notice of Deposition Duces Tecum (BSA and SFC)**

**Schedule A**

- Plaintiffs agree that community related emergencies are unnecessary. Plaintiffs only seek information pertaining to first aid related emergencies. Plaintiffs wish to limit the scope to activities involving physical exertion and exposure to elements. BSA and SFC object and seek to limit the same in solely to hiking, trekking, and first aid.
- Plaintiffs and BSA/SFC maintain the same positions for numbers 2, 5 and 6.
- Plaintiffs agreed to limit # 3 to first aid emergency situations.
- As to number 11, Plaintiffs seek a corporate representative with knowledge about the organizational structure, the different types of scouting and who is responsible for running those areas, the policies and guidelines of BSA/SFC, the manuals that define each levels responsibilities. I indicated that I would get back to you as to whether we still object or

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would agree to this area of inquiry.

- As to number 12, BSA/SFC agrees to producing a representative with knowledge of lawsuits concerning heat related serious illnesses and/or deaths stemming from hiking activities within the past five years. Plaintiffs maintain their request number 12 is valid.
- As to number 14, BSA/SFC object to the request, but this office will request from BSA/SFC documentation it possesses concerning heat related incidents occurring during the 2005 Jamboree. We will try to accomplish this within 10 business days.
- As to number 19, I believe the parties agreed 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. However, BSA/SFC seeks to limit this to the past five years and to hiking only as we discussed throughout the conversation.

#### Schedule B

- For items 1, 2, 3, 4, 5, 6, and 7, BSA/SFC seeks to limit the records to hiking, trekking and first aid. Plaintiffs believe it should include all outdoor activities that could involve physical exertion and/or involve the elements of nature.
- For item 12 Plaintiffs agree only to limit the request to those phones that are paid for by BSA and SFC. BSA / SFC wishes to limit the request to calls made to or received from Plaintiffs on May 9, 2009.

#### Notices of Deposition Duces Tecum (named SFC representatives)

- As to number 1, SFC wishes to limit the inquiry to the particular deponent's communications with Troop 111 concerning Michael and the hike dating back to January 1, 2009. Plaintiffs would not change the request other than to limit it to the past three years.
- As to number 3, SFC wishes to limit the inquiry to the particular deponent's communications with Crompton or Schmidt concerning Michael and/or the hike dating back to January 1, 2009. Plaintiffs would not change the request other than to limit it to the past three years.
- As to number 6, SFC wishes to limit the inquiry to the particular deponent's communications with Crompton or Schmidt concerning Michael and the hike dating back to January 1, 2009. Plaintiffs would not change the request other than to limit it to the past three years.
- As to number 13, I believe the parties agreed that the request would be subject to the privilege log previously produced as well as the upcoming supplemental privilege log.



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- Plaintiffs would not agree to limit number 19 in any way. SFC believes it is vague, ambiguous, overbroad, a fishing expedition. SFC would be willing to limit it to documentation regarding lawsuits brought by any individual over the past 5 years concerning heat related serious illnesses/death.
- Plaintiffs agree to limit request 25 only to the past 5 years involving outdoor activities that require physical exertion. SFC request to limit it to lawsuits in the past 5 years stemming from heat related serious illness/death on hikes.

#### **BSA/SFC's Responses to Requests for Production**

- As to number 1, BSA/SFC will review the documents it claims privileged and amend the privilege log if possible to include (1) the preparer of the document(s), (2) the purpose for which it was prepared and (3) will provide a more specific description of the document(s) to the extent possible.
- As to number 2, BSA/SFC provided primary and excess levels of insurance coverage up to approximately \$10 millions. BSA/SFC objects to producing further insurance policies to the extent they exist.
- As to number 3, BSA/SFC agrees to provide a better response
- As to number 4, BSA/SFC will amend the privilege logs to the extent possible
- As to 5-8 and 12-15, BSA/SFC already provided valid responses. However, as discussed these responses represent the complete and full responses from BSA/SFC.
- As to number 9, the response given encapsulates the additional requests made through the January 19, 2011 letter to the best of our knowledge.
- As to number 16, BSA/SFC seeks to limit the request to litigation initiated in the past five years against BSA/SFC that stem from serious heat related illnesses and heat related deaths from a BSA/SFC hiking activity. Plaintiffs seek to limit the request to litigation initiated in the past five years against BSA/SFC that stem from heat related illnesses, heat related death from any outdoor related activity that involves physical exertion and/or the elements of nature.
- As to numbers 17, 18, BSA/SFC will provide a better response.

#### **BSA/SFC's Answers to Interrogatories**

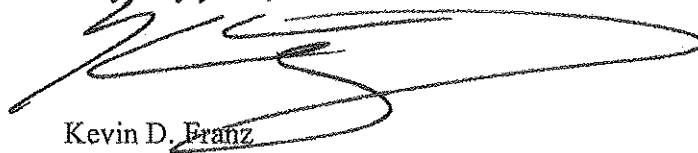
January 26, 2011

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- BSA/SFC agree to amend its answer to number 7.
- As to number 9, BSA/SFC seeks to limit the request to litigation initiated in the past five years against BSA/SFC that stem from serious heat related illnesses and heat related deaths from a BSA/SFC hiking activity. Plaintiffs seek to limit the request to litigation initiated in the past five years against BSA/SFC that stem from heat related illnesses, heat related death from any outdoor related activity that involves physical exertion and/or the elements of nature.
- As to number 10, BSA/SFC seeks to limit the request to litigation initiated in the past five years against BSA/SFC that stem from serious heat related illnesses and heat related deaths from a BSA/SFC hiking activity. Plaintiffs seek to limit the request to litigation initiated in the past five years against BSA/SFC that stem from heat related illnesses, heat related death from any outdoor related activity that involves physical exertion and/or the elements of nature.
- BSA/SFC agree to amend its answer to number 11.

BSA/SFC will move for a protective order regarding the notices of deposition no later than February 2, 2011. BSA/SFC will represent through such motions the concessions made by both parties despite the inability to reach an agreement. Plaintiffs will move to compel better answers/responses no later than February 5, 2011. Plaintiffs will represent through such motions the concessions made by both parties despite the inability to reach an agreement. BSA/SFC will provide better answers and an amended privilege log as indicated above by February 10, 2011.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kevin D. Franz', is written over a horizontal line.

Kevin D. Franz

KDF/mg

# **Exhibit 2**

## **PLAINTIFFS' DISCOVERY REQUESTS WHICH REMAIN IN DISPUTE**

### **Plaintiffs' Request 9:**

Any and all written guidelines, training manuals, checklists, policies, procedures, first aid training handbooks, manuals, or other written documents, as well as videotape and computerized materials, that provide instruction, guidance and training to Scoutmasters.

### **Defendants' Response:**

Boy Scouts of America objects to this request as overly broad, burdensome and that it requests information entirely irrelevant to the issues involved in this case. Without waiving this objection, Boy Scouts of America states that the following original materials are available at the office of its attorneys for inspection:

"Guide to Safe Scouting," "Boy Scout Handbook," "The Troop Committee Guidebook," "BSA Field Guide," "The Scoutmaster Handbook," "Hiking Merit Badge Book," and "First Aid Merit Badge Book." Available on line is the Hazardous Weather Training Course.

**Plaintiff's Request 10:** 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 scouts hikes for the past 20 years.

**Defendants' Response:** Boy Scouts of America objects to this request as overly broad, a request for 20 years of items, as it is unduly burdensome, unduly vague and ambiguous, not likely to lead to the discovery of admissible evidence, not limited to scope and as potentially protected as privileged due to the request for private documents. To the extent that the request is intended to encompass materials related to claims for injury or compensation then BSA asserts its work product and attorney/client privileges.

**Note:** In discussions with Defendants' counsel, Plaintiffs' agreed to limit this request to the **five year** period prior to Michael Sclawy-Adelman's death, and only as to complaints involving death or illness serious enough to require medical care due to heat related causes, exposure to the elements and/or exertional activities from outdoor activities.

**Note:** Subsequently, the Defendants modified their position as reflected by the correspondence attached as Exhibit "2" hereto to provide:

**Plaintiffs' Request 16:** A copy of any and all complaints filed against the Defendant Boy Scouts of America relative to scouts injured or killed on boy scout related hikes over the past 20 years.

**Defendants' Response:** Boy Scouts of America objects to the 20 years span of this request as overly broad, unduly burdensome, vague and ambiguous, not likely to lead to the discovery of admissible evidence, not limited in scope.

**Note:** In discussions with Defendant's counsel, as with Request No. 10 above, the Plaintiffs' agreed to limit this request to complaints involving death or illness serious enough to require medical care, due to heat related causes, exposure to the elements and/or exertional activities from outdoor activities over the **five year** period prior to the subject incident up to the present.

**Note:** Subsequently, the Defendants modified their position as reflected by the correspondence attached as Exhibit "2" attached hereto, as follows: "As to number 16, BSA/SFC seeks to limit the request to litigation initiated in the past 5 years against BSA/SFC that stem from serious heat related illnesses and heat related deaths from a BSA/SFC "hiking" activity."

**Plaintiffs' Interrogatory 9:** Please state whether Defendant Boy Scouts of America has ever been a party, either plaintiff or defendant, in a lawsuit other than the present matter within the last 20 years relating to allegations of negligence resulting in injuries or death to boy scouts while participating in hikes and hiking activities. If so, state whether this defendant was the plaintiff or defendant, the nature of the action, and the date and court in which such suit was filed.

**Defendants' Response:** BSA objects to the overly broad twenty year time frame and the request for information regarding injuries or death which are unrelated to the claimed cause of death in this case, a heat related problem. Moreover, BSA objects because the interrogatory is not likely to lead to the discovery of relevant evidence, it is not limited in scope, it is unduly burdensome and harassing.

**Plaintiffs' Interrogatory No. 10:** Please state whether Defendant Boy Scouts of America has ever been a party, either plaintiff or defendant, in a lawsuit other than the present matter within the last 20 years relating to allegations of negligence resulting in injuries or death to boy scouts while participating in outdoor activities. If so, state whether this defendant was the plaintiff or defendant, the nature of the action, and the date and court in which such suit was filed.

**Defendants' Response:** BSA objects to the overly broad twenty year time frame and the request for information regarding injuries or death which are unrelated to the claimed cause of death in this case, a heat related problem. Moreover, BSA objects because the interrogatory is not likely to lead to the discovery of relevant evidence, it is not limited in scope, it is unduly burdensome and harassing.

# **Exhibit 3**

<http://www2.timesdispatch.com/news/2010/jul/25/jamb25-ar-349408/>

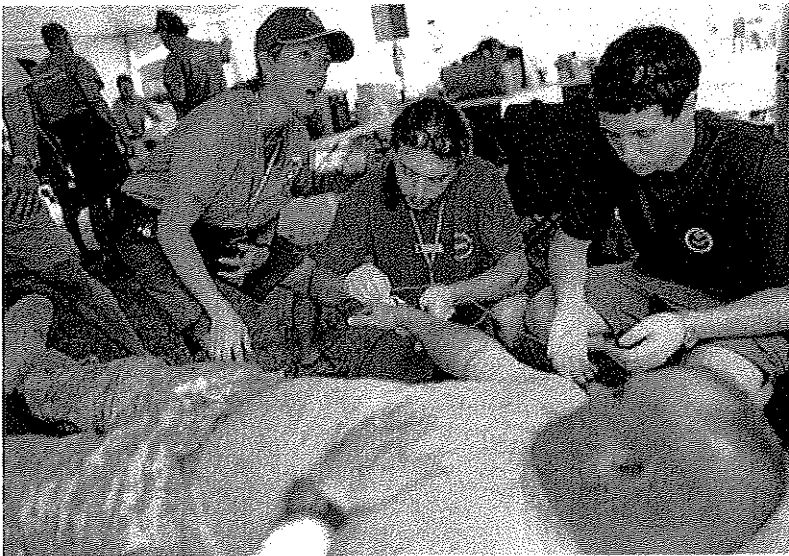
# Richmond Times-Dispatch

Published: July 25, 2010

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## Scouting officials emphasize safety at jamboree

By MARK BOWES



When 30,809 Boy Scouts and their 3,770 adult leaders begin arriving tomorrow at Fort A.P. Hill in Caroline County for what could be the last National Scout Jamboree in Virginia, the issue of safety will be paramount and put into practice like never before.

Alarmed by the accidental electrocution deaths of four Scout leaders at the last national jamboree in 2005 -- and the thousands of heat-related ailments of boys overwhelmed by blistering temperatures -- Scouting officials have adopted firm new rules and innovative procedures designed to limit safety and health-related problems during this year's 10-day event.

"Obviously, from the last jamboree, the rules were there, but they were lax rules and they weren't enforced, and they were somewhat ambiguous in interpretation," said Jonah Bowles, co-chairman of the Boy Scouts of America's Heart of Virginia Council Jamboree Committee covering central Virginia, which is sending 360 boys and 40 adults in 10 troops.

That attitude has shifted notably, Bowles said.

"All the rules this Jamboree, whether they appear to be very important rules or whether they appear to be insignificant rules, will be strictly enforced -- because every rule is in place for a purpose," he added. "So that's probably the biggest change that there is. It's just a change of mind-set, which also requires that everybody thinks safe."

Ian Coddington, who will lead Heart of Virginia Council Troop 1709, said the safety issue has been the No. 1 topic since the earliest days of preparation.

"Scoutmasters going to the Jamboree have been inundated . . . with e-mails and [other information] pertaining to safety in every shape, manner and form," said Coddington, who last led a Jamboree Scout troop in 1985.

Matt Hadley, who will lead Heart of Virginia Council Troop 1712, said he's held preparatory meetings with his boys since late December "and each step of the way we've promoted safety. The safety is about hydration and general first aid, those are the basics of it." Hadley is director of Publishing IT for Media General Inc., owner of the Richmond Times-Dispatch.

The most notable rule adopted as a result of the deaths five years ago is a requirement that no Scout structure -- including tents, flagpoles or gateways leading into individual troop sites -- can be higher than 10 feet. That directly addresses one of the contributing factors in the 2005 tragedy. The four leaders were electrocuted when the center pole of a large canopy tent they were helping a contractor erect touched overhead power lines.

The 10-foot height restriction was put in place after national Scouting officials consulted with the Rappahannock Electric Cooperative, which supplies electricity to the Fort A.P. Hill Army base, said National Jamboree Director Larry Pritchard.

"That's just a good kind of be prepared, preventive measure that we've put in place," said Pritchard, citing the Boy Scout motto.

Officials also have banned metal from gateways and flagpoles in troop subcamps, which can attract lightning during storms. Wood and PVC poles are being used as substitutes.

While some have grumbled privately at that requirement, many Scout leaders believe it's worth the inconvenience.

"With the thunderstorms we get around here, you don't want to risk lightning strikes," Coddington said.

...

How to beat the heat -- and get tens of thousands of Scouts to keep watch on the temperatures and their health -- also has been a source of serious study since the last Jamboree.

At the 2005 event, hundreds of boys and visitors were felled by blistering temperatures as they were awaiting President George W. Bush's initial scheduled visit at the July 27, 2005, opening show, which had to be canceled as a lightning storm approached.

In all, nearly 3,500 of the Jamboree's 43,000 participants in 2005 fell sick from sweltering heat over 10 days, including about 500 people on July 27, when the heat index rose to 121 degrees, according to a report by the Centers for Disease Control and Prevention.



Dozens that day were taken to Fort A.P. Hill's medical clinic and to hospitals in Richmond and Fredericksburg. Military personnel carried boys on stretchers and tossed water bottles to the arena crowd.

Participants, observers and the CDC were critical of the way the BSA prepared for and handled the heat in 2005.

In the five years since, national Scouting officials have consulted with the U.S. Northern Command Joint Task Force, under the U.S. Department of Defense, "to help us build our safety tools to make sure that all our Scouts and visitors are in a safe environment," Pritchard said.

Perhaps the most significant development from that collaborative effort was the Scouts' decision to adopt a military-style heat-index system at the Jamboree that involves using color-coded flags at all program and activity sites, nearly 60 in all.

"We took what they knew and used and worked together with all of our Boy Scout program experts to craft a plan for us that was appropriate for our Scouts at the Jamboree," Pritchard said. "So we took military learning and applied it to the Boy Scouts."

Depending on the heat and humidity at any given hour during the day, a flag of a certain color will be raised to alert Scouts to the current temperature within several degrees, the level of exertion they can safely engage in, the amount of water they should drink and the rest they should take.

The system includes white, green, yellow, red and black flags, with white being the least severe (78-81.9 degrees) and black being most severe (over 90 degrees).

Each Scout, adult leader and Jamboree staff member will be issued small heat-index cards that they will wear around their necks with a lanyard. The cards display the heat-index system by color and temperature, along with the minimum amount of water they should drink per hour for that level of heat and humidity.

As a bonus, the backs of the cards articulate the Jamboree's "Lightning Policy," which tells Scouts when and how to respond to a storm with lightning.

"It may be the first time that anyone other than the military has used a [heat-index] system like this in the country," Pritchard said. "Not only is it a good tool for us at the Jamboree, but it's also a tool that all of our Scouts and leaders can take back to their local council, so they can then apply it to their summer camp or high-adventure programs."

The Jamboree's heat-index system will be backed by hourly temperature updates from the U.S. Northern Command Joint Task Force's weather service. "They can help us plan and anticipate what the weather will be," Pritchard said. "[Their] weather forecasts are as good as what you see on The Weather Channel or any local TV station."

The weather forecast calls for high temperatures in the low 90s tomorrow through Friday. There is a chance of showers and thunderstorms Tuesday and Wednesday.

In yet another change aimed at preventing mass heat casualties at Jamboree arena shows, organizers have switched the time of the first show on Wednesday from early evening to morning. The show will begin at 10 a.m., which will allow Scouts to march to the arena from their campsites in the cool of the

morning, Pritchard said.

"In past Jamborees, both of these [shows] have been early evening events, which has [forced] Scouts in the farthest campsites to leave their areas at 3:30 or 4 o'clock to march to the arena in the hot sun," Pritchard explained.

With the change, the Wednesday show will be over before the sun reaches its peak, he said. The second show on July 31, which celebrates Scouting's 100th anniversary and includes fireworks, will remain an evening event.

...

In another layer of safety, the Scouts -- in addition to their heat-index cards -- will wear on a lanyard another small card that lists the "10 Safety Essentials" they need to safely participate. They are a water bottle, sunscreen, hat, hand sanitizer, lip balm, rain gear, personal first aid kit, flashlight, Jamboree map and Jamboree identification.

"It's just a simple checklist," Pritchard said. "It's right there in front of the Scouts so they know what they should have with them at all times."

Robert B. "Chip" Delano, who will lead Heart of Virginia Council Troop 1705, seemed to take the new rules and restrictions in stride -- a necessary imposition that should reduce the odds of another tragedy and fewer Scouts falling ill from the heat.

Delano was also a Jamboree Scoutmaster in 2005, and his troop was on the other side of camp when the four adult leaders from Alaska were struck down.

"You hope that things like that don't happen," he said. "But when you put 40,000-some people together for 10 or 12 days, just by the numbers, things will sometimes happen, unfortunately."

Hadley, of Troop 1712, said the proposed safety measures will be only as good as they are executed.

"I think they have done a good job of trying to make a difference," Hadley said. "Now time will tell how much of a difference. But it's not lip gloss. I think they have worked hard to make changes that have come directly as a result of lessons learned -- some the hard way, some just good lessons to be learned along the way."

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