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,

Plaintiffs,
vs.

Boy Scouts of America, et al.

Defendants.
_____/

CASE NO. 1:10-cv-22236-ASG
District Ct. Judge: Alan S. Gold

Magistrate Judge: Chris M. McAliley

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO COMPEL [DE # 129]

COMES NOW, Defendants, Boy Scouts of America ("BSA") and South Florida Council, Inc., ("SFC") by and through their undersigned counsel, hereby respond to Plaintiffs' Motion to Compel [DE #129]:

1. This is a wrongful death 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 main discovery disputes are: (1) whether production of prior lawsuits against BSA/SFC should be limited to heat-related illnesses/deaths stemming from hikes, or simply all prior lawsuits and "complaints" against BSA/SFC concerning "outdoor" and "exertional" activities and (2) whether requested documents should be limited to hiking, trekking and first aid emergencies or all "outdoor" and "exertional" activities.

Request for Production number 9

3. Number 9 does not request documents concerning "outdoor" or "exertional" activities. It only asks for materials concerning guidance and training to scoutmasters. Moreover, the documents listed in Defendants' responses have been available for inspection at undersigned's office since October of 2010. Those materials encapsulate the additional requested areas of inquiry as listed in Plaintiffs' January 19, 2011 letter attached as Plaintiffs' composite exhibit 1. *See also* January 26, 2011 letter attached as Plaintiffs' composite exhibit 1 addressing request for production number 9. Thus, Plaintiffs' argument regarding this request is misplaced.

Interrogatories 9 & 10 and Requests for Production 10 & 16.

4. These concern the dispute of whether information of prior lawsuits or "complaints" against BSA/SFC should be limited to heat-related illnesses/deaths from hikes, or simply all prior lawsuits and "complaints" against BSA/SFC concerning all outdoor activities. Interrogatories 9 and 10 are identical, except that 9 asks for lawsuits related to **"**hikes," and 10 asks for lawsuits related to "outdoor activities."
5. The discovery rules do not permit a party to go on a fishing expedition. Porter v. Ray, 461 F.3d 1315, 1324 (11th Cir. 2006). "The potential for discovery abuse is ever-present, and courts are authorized to limit discovery to that which is proper and warranted in the circumstances of the case." Katz v. Batavia Marine & Sporting Supplies, Inc., 984 F.2d 422, 424 (Fed.Cir. Ohio 1993).
6. Seeking every private/public complaint or lawsuit concerning BSA "outdoor" and "exertional" activities is a fishing expedition. This case concerns a heat-related death that occurred during a hike. The requests/interrogatories should be reasonably limited to lawsuits for heat-related illnesses/deaths stemming from hiking within the past 5 years. Request number 16 asks for any injuries on a hike. Request number 10 asks for public and private "complaints" against BSA relative to hikes. These requests would potentially include snake bites, sprained ankles, poison ivy, wild animal attacks, cuts, blisters, etc. These examples extremely overbroad and not limited to the scope of the issues in this case. A lawsuit concerning personal injuries such as a sprain or a broken ankle has anything to do with the medical issues in this case or the "control" issues raised by Plaintiffs in this case. Even the bullet-points listed in Plaintiffs' Motion to Compel are limited to "hikes." Not one bullet point includes the terms "outdoor" or "exertional." Plaintiffs cannot argue lawsuits from "outdoor" and "exertional" injuries/deaths touch and concern the issues in this case when none of their listed issues involves the breadth of those vague and broad areas.
7. Plaintiffs' discovery requests are analogous to those in Melendez v. Mason, 2007 WL 1471799 (M.D.Fla), a civil rights case. There, the plaintiff sought discovery of all arrests made by Detective Mason in his 19 year career and all internal complaints launched by citizens against

Kissimmee Police Department in the last 10 years. Id. at *1. Defendants objected asserting the requests were over broad and unduly burdensome. Id. The Court agreed with Defendants, and in denying Plaintiff's Motion to Compel, held that the requested documents must be limited "to categories that bear some reasonable relationship to the claims pending in this case. Umbrella references to 'all' records of activity over a decade or two are characteristic of an improper fishing expedition, not permitted under the rules of discovery." Id.

8. Limiting discovery to lawsuits concerning heat-related illness/death stemming from hikes over the past 5 years bears a reasonable relationship to the claims pending in this case.
9. Interrogatory number 10 requests lawsuits resulting in injury or death to boy scouts while participating in "outdoor activities." Defendants objection and requested limitation to this request also touches and concerns issue #2: *whether requested documents should be limited to hiking, trekking and first aid emergencies or all "outdoor" and "exertional" activities*.
10. The relevant issues in this case are hiking, trekking and first aid procedures. The umbrella request concerning "outdoor" and "exertional" activities are over broad, burdensome and harassing. Archery, for example, is an outdoor activity that involves physical exertion and has nothing to do with this case. BSA offers merit badges in over 120 activities, many of which are outdoor related yet have nothing to do with the issues in this case (e.g. archery, space exploration, oceanography, golf). Like in Melendez, these requests concerning all "outdoor" and "exertional" activities bears no relationship to the claims pending in the case.
11. Furthermore, Hessen v. Jaguar Cars, Inc., 915 F.2d 641 (11th Cir. 1990), cited by the Plaintiffs, actually supports Defendants' arguments. That Court, recognized that ". . . prior occurrences or accidents . . . is only admissible if ***conditions substantially similar to the occurrence*** caused the prior accidents . . ." Id at 649-650 (emphasis added). Plaintiffs' overbroad requests related to "outdoor" and "exertional" activities is not substantially similar to heat-related death/illness stemming from a hike.

By:____s/Kevin D. Franz_____

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent February 8, 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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