

**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, et al.

Magistrate Judge: Jonathan Goodman

Defendants.

**BOY SCOUTS OF AMERICA'S RESPONSE TO PLAINTIFFS' MOTION TO COMPEL BETTER
RESPONSES TO REQUEST FOR PRODUCTION [DE 198]**

DEFENDANT, Boy Scouts of America ("BSA"), by and through its undersigned counsel, and pursuant to Court Order files this Response to Plaintiffs' Motion to Compel:

1. This action stems from an incident on **May 9, 2009**, when Michael Sclawy-Adelman died while taking part in a **hike** through The Florida Trail in the Florida Everglades.
2. Judge McAliley permitted discovery of one specific event that occurred prior to the incident in question: The **2005** BSA Jamboree. Plaintiffs focused on that year's Jamboree, because there were many instances of heat related ailments. The numerous heat-related ailments during the 2005 event were unrelated to the heat issue alleged by Plaintiffs in this suit. It was an isolated incident. The President of the United States spoke at the 2005 Jamboree. The Secret Service made scouts empty their water containers upon entry to the Jamboree for security reasons.¹ That contributed to the heat issues at the 2005 Jamboree.
3. Discovery on that event was sought concerning "planning" as it relates to "being able to recognize heat related injuries." See 2/11/2011 at p. 7 hearing attached as *Exhibit "B."* Judge McAliley permitted discovery as to the 2005 Jamboree as it concerns policies or procedures stemming from that event that would apply to the hike on May 9, 2009. *Id.* at 31-32. Plaintiff now seeks any information concerning the **2010** Jamboree through 14 separate requests for

¹ See Deposition of Richard Bourlon, the Health and Safety Team Leader for BSA at p. 223-224, attached as *Exhibit "A."*

production. The 14 separate requests concerning the 2010 Jamboree are harassing, not limited in scope and not likely to lead to the discovery of admissible evidence.

4. Plaintiffs wish to make this suit a referendum on the entire BSA organization. To do so, Plaintiffs have propounded a plethora of discovery,² and seek to conduct a fishing expedition to learn everything about a 2010 Jamboree, which has absolutely nothing to do with the hike in question. In fact, the Secret Service, whose presence contributed to the isolated, unusual incident at the 2005 Jamboree, were not present at the 2010 Jamboree. Bourlon at 313-314.
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). Discovery requests must bear “some reasonable relationship to the claims pending” in a case. Melendez v. Mason, 2007 WL 1471799, *1 (M.D.Fla). Seeking discovery on a 2010 national scouting event, wholly unrelated to the May 9, 2009 hike in question, bears no reasonable relationship to the claim brought by Plaintiffs. It constitutes a fishing expedition.
6. Plaintiffs’ contend that a “flag system” implemented at the 2010 Jamboree is relevant to the 2009 hike. Plaintiffs seek policies and procedures to prevent heat-related ailments, but the flag system for the 2010 Jamboree was designed for *that* event, and had no application to a wholly unrelated hike that was not conducted on a U.S. Military base. The “flag system” for the 2010 Jamboree was developed in conjunction with the U.S. Military and supported by military scientists. Bourlon at 234. It was developed and utilized for the 2010 Jamboree, because the event took place on a military base, which had the capabilities and recourses to execute the flag system. Id. at 236-237. This included implementation by medical professionals on site at the military base. Id. at 249-250. It applied strictly to the 2010 Jamboree.

Q. And was the impetus for developing this flag system, the one that’s set forth in Exhibit Number 13, the events that occurred during the 2005 jamboree?

² Plaintiffs have already issued over 200 requests for production from BSA through 7 separate requests for production and through notices of deposition duces tecum to BSA’s Corporate Representatives.

A. I don't think I'd answer that in the affirmative. I'd say that that may have been part of it. **I'd say that the reason we went with this particular flag system is we were on a military base.** We utilized a modified military system. Our joint task force partners had the capabilities to provide us with we bulb globe temperature, which they would typically do, to – and use with their troops. And therefore we were able to use their subject matter expertise and their equipment to give that wet bulb globe temperature reading which correlates directly with their flag system from white through black. Id. at 255. (emphasis added).

Q. Have the Boy Scouts of America used any modification of this particular system as set forth in – the flag system set forth in Exhibit 13 subsequent to the 2005 jamboree as part of its policies, procedures, standards or guidelines for the performance of Boy Scout activity – Boy Scout of America activities?

A. To my knowledge there's no Boy Scout of America guidance, documents that relate to a flag system for hiking or camping – outside of this that what you have in front of me in Exhibit 13 which was executed at the 2010 Jamboree. Id. at 256.

Q. It's your testimony that the requirements for black flag day, as set forth in Exhibit 13, would not apply to a hike through the Everglades or some other national forest?

A. I'm saying that – well, I'm saying that this card applied only to the national – 2010 National Scout Jamboree, as I mentioned earlier. And it has not been executed anywhere outside of the national scout jamboree because, quite honestly, it would almost be impossible to execute this in the Everglades for a unit. Id. at 319-320.

Q. [D]id the committee discussions on either of those occasions [October of 2010 and February of 2011] discuss or go into the sufficiency and adequacy of the Boy Scout of America guidelines, policies and procedures related to hiking and the heat-related ailments?

A. Not – this case didn't drive any of those. There have been discussions related to heat, and based upon the 2010 jamboree developed guidelines, how we could implement some of those best practices in the future within the organization . . . Neither was driven by this particular issue or this particular case, but they are a natural development in response how to best practices and how to manage large group heat-related issues, but not specific to hiking, not specific to this particular incident. Id. at 175-176.

7. There is no evidence that the 2010 system was available at or could be supported by the Oasis station where the hike commenced. Plaintiff argues that there will be “considerable testimony to the contrary at trial.” But, no evidence is offered to show otherwise or that it would be relevant; merely a footnote asserting a dispute. That is insufficient to establish the flag system's application to the May 9, 2009 hike and insufficient to establish relevancy. The 14 requests are nothing more than an attempt to call into question BSA policies for a 2010 national event. They are outside the scope of the issues in this case and are irrelevant.

By: _____s/Kevin D. Franz_____

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent May 10, 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; Ubaldo J. Perez, Jr., Esq., LAW OFFICES OF UBALDO J. PEREZ, JR., P.A., 8181 NW 154th Street, Suite 210, Miami Lakes, FL 33016.

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