

**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,

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', SOUTH FLORIDA COUNCIL INC., BOY SCOUTS OF AMERICA AND
BOY SCOUTS OF AMERICA, AMENDED REPLY TO PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR LEAVE TO AMEND AFFIRMATIVE DEFENSES**

COMES NOW, Defendants, South Florida Council Inc., Boy Scouts of America, ("South Florida Council") and Boy Scouts of America, by and through their undersigned counsel, hereby file their Reply to Plaintiffs' Response to the Motion for Leave to Amend Their Affirmative Defenses to Plaintiffs' Amended Complaint and state more fully as follows:

1. Plaintiffs do not oppose Defendants' Motion for Leave to amend Affirmative Defenses to name The U.S. Department of the Interior National Park Service as a Fabre Defendant.
2. Without "opposing," Plaintiffs seem to allege that the Motion for Leave is frivolous. Without any explanation, Plaintiffs assert that "defendants who have filed motions for leave to amend . . . do not have a legal for factual basis on which to base such affirmative defenses. . ." (i.e. that the U.S. Department of the Interior National Park Service may be liable in whole or in part in the present matter.). *See* (DE # 81, pg. 2).
3. The factual and legal basis for naming the U.S. Department of the Interior National Park Service as a Fabre defendant is quite simple.

4. Plaintiffs claim that Defendants were negligent by approving the hike on the day in question and by allowing Michael Sclawy-Adelman to hike on the day in question, specifically because temperatures that day were around 100 degrees Fahrenheit. *See* Amended Complaint at ¶¶ 6-10, 40, 48, 58, 66, 90, 107.
5. The U.S. Department of the Interior National Park Service processed a Backcountry Use Permit for the Troop to hike on the day in question. *See* Permit attached as **Exhibit “A.”**
6. As the U.S. Department of the Interior National Park Service processes hiking permits for the subject trail, it was in the best position to determine if environmental factors on a given day pose a threat to hikers.
7. Under a comparative fault legal theory, the U.S. Department of the Interior National Park Service may be liable in whole or in part for permitting the group to hike on May 9, 2009 despite the alleged high temperatures. *See* Fla.Stat.Ann. §768.81(3); *see also* Fabre v. Marin, 623 So.2d 1182 (Fla. 1993). Thus, the U.S. Department of the Interior National Park Service is an appropriate Fabre defendant.

WHEREFORE, Defendants, South Florida Council and Boy Scouts of America, respectfully request that this Honorable Court GRANT the proposed Order (attached to DE # **62**) granting leave for Defendants to file the proposed pleadings (Exhibits A and B attached to DE # **62**), and deem the same filed as of the date of the Court’s Order, and for such other relief as this Court deems necessary.

By:____s/Kevin D. Franz_____

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent January 3, 2011 to: 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., Grove Plaza Building, 5th floor, 2900 Middle Street, Miami, FL, 33133; 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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