UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC[1],	:	Case No. 20-10343 (LSS)
	:	*Jointly Administered*
Debtors.	:	**Ref. No. 5466**

OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTIONS 363(b) AND 105(a) OF THE BANKRUPTCY CODE, (I) AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE RESTRUCTURING SUPPORT AGREEMENT, AND (II) GRANTING RELATED RELIEF FILED BY COURTNEY KNIGHT AND STEPHEN KNIGHT, JOINTLY AS THE SURVIVING PARENTS OF E.J.K, A MINOR CHILD AND STEPHEN KNIGHT, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF E.J.K

Courtney Knight and Stephen Knight, jointly as the surviving parents of E.J.K, a minor child, and Stephen Knight as Personal Representative of the Estate of E.J K. (together the "Knights"), by and through undersigned counsel, by way of Objection to the Debtors' Motion For Entry of An Order, Pursuant To Sections 363(b) And 105(a) of the Bankruptcy Code, (I) Authorizing the Debtors to Enter Into and Perform Under the Restructuring Support Agreement (the "RSA"), and (II) Granting Related Relief (the "Motion"), hereby state:

BACKGROUND

1. On January 8, 2019, the Knights filed a wrongful death action in the State Court of Cobb County, Georgia (the "Georgia Action") against Debtor Boy Scouts of America ("BSA") and Atlanta Area Council, Inc. ("Atlanta Council") for the death of their 14-year-old son, E.J.K. ("E.J.K.") on June 25, 2018. [*See* Docket No. 545, Motion for Relief from Stay at Ex. A, Complaint].

[1] The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311) (together, the "Debtors"). The Debtors' mailing address is 1325 West Walnut Hill Lane, Irving, Texas 75038.

2. E.J.K. was killed while attending a summer camp near Atlanta, Georgia, owned and operated by the Atlanta Council and accredited by the BSA National Camp Accreditation Program.

3. The Georgia Action, consisting of claims for negligence, negligence *per se*, wrongful death, premises liability, punitive damages and vicarious liability of BSA for the negligence of the Atlanta Council, has been assigned to Chief Judge Carl W. Bowers ("Judge Bowers") and remains pending.

4. On February 18, 2020, BSA and Delaware BSA, LLC (the "Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), thereby automatically staying the Georgia Action pursuant to 11 U.S.C. § 362(a)(1).

5. On February 19, 2020, the Court ordered joint administration of the Debtors' Chapter 11 cases. [Docket No. 61].

6. On May 4, 2020, the Knights filed a motion for relief from the automatic stay to proceed with the Georgia Action for the purposes of recovering from available insurance proceeds and liquidating their claims. [Docket No. 545].

7. By Order entered on July 8, 2020, the Knights' motion was granted and the automatic stay of 11 U.S.C. §§ 362(a) was modified for the limited purpose of permitting the Knights to liquidate their claims through the continuation of the pending Georgia Action (the "Stay Relief Order"). [Docket No. 989]. A copy of the Stay Relief Order is attached hereto as **Exhibit A**.

8. Following the completion of fact discovery in the Georgia Action, the Knights filed a sanctions motion based upon BSA's and the Atlanta Council's improper withholding of

discoverable evidence, including but not limited to documents that Judge Bowers had previously ordered them to produce.

9. After the parties to the Georgia Action fully briefed the issues and argued the motion, Judge Bowers entered an issue-preclusion sanction ("Sanctions Order") establishing BSA's and Atlanta Council's negligence and policy violations as well as the foreseeability of the storm that caused E.J.K.'s death as a matter of law. A copy of the Sanctions Order entered in the Georgia Action is attached hereto as **Exhibit B**.

10. The Sanctions Order puts the Knights' Non-Abuse Litigation Claim in the unique position of having negligence, policy violations, and foreseeability established, defenses struck, and damages exposure for the death of a child as it is the only Non-Abuse Litigation Claim for the 2018 coverage year to be in this procedural posture.

11. Under Georgia's Wrongful Death Act, the Knights are entitled to recover for the full value of the life of their decedent, E.J.K, as shown by the evidence. O.C.G.A. § 51-4-2.

12. The evidence of the full value of E.J.K.'s life paints a clear and compelling picture of E.J.K. as a young man of exceptional potential and significant accomplishment.

13. E.J.K. aspired to be an environmental engineer and to use his skills both to improve the world and to address issues of gender and racial inequality as well as environmental challenges across the globe.

14. A deep thinker and a passionate inventor, E.J.K. had big dreams, and his motto – "Start everything with kindness and the end will be okay" – has evolved into a poignant legacy and nonprofit organization called Kindness to Action that continues to have a global impact even after his untimely death.

15. At only 14 years old, E.J.K. was a Life Scout working toward becoming an Eagle Scout, an accomplished saxophone player, a Rubik's cube master, a voracious reader, a cross-country runner, a dedicated community volunteer, and an honors student selected by his teachers for recognition for his outstanding character and positive contributions to his school community. A brief biography of E.J.K. that details his life in greater detail, including but not limited to a sampling of the type of testimony that will be presented at trial in support of the full value of E.J.K.'s life is attached hereto as **Exhibit C**.

16. For the reasons set forth in detail below, the Knights object to the Debtors' Motion to enter into and perform under the RSA to prevent impairment of their claims and to preserve the availability of all applicable insurance policies for their claims. [Docket No. 989].

OBJECTIONS TO THE RELIEF REQUESTED

A. The RSA Impairs the Knights' Rights to Recover from Available Insurance Coverage Because it Does Not Require Earmarking of Insurance Company Settlement Proceeds to Specific Policy Years.

17. The RSA unfairly and improperly impairs the Knights' ability to satisfy their claims from available insurance proceeds.

18. For the period between 2008 and 2018, the BSA and related parties were covered under primary and excess insurance policies issued by Old Republic Insurance Company ("Old Republic"). Under the primary and excess policies issued by Old Republic, the BSA and related entities are provided with coverage with respect to personal injury, and property damage or malpractice up to a limit of $1 million per occurrence with no aggregate limits under the Old Republic primary policies and up to $9 million per occurrence and $9 million in the aggregate per year under the Old Republic excess policies. Old Republic Insurance Company's Motion Pursuant to Sections 105(a) and 362 of the Bankruptcy Code and Bankruptcy Rule 4001 for an

Order Modifying the Automatic Stay to Permit Payments of Claims Against Non-Debtor Insureds and Related Defense Costs Under Insurance Policies (the "Old Republic Motion") [Docket No. 678] at ¶¶ 6 and 7.

19. The BSA also has additional "substantial excess Insurance Coverage during this time period." Amended Disclosure Statement for the Fourth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC ("Disclosure Statement") [Docket No. 5485] at 47.

20. The Knights' claim is covered by the Old Republic policies for the period from March 1, 2018 to March 1, 2019 (the "2018 Policy Year").

21. Upon information and belief, there has already been erosion of available insurance proceeds for the policies covering the Knights claims, due to mounting defense costs and settlements reached to date. Indeed, the Debtors have represented that during the period between 1990 and 2018, there are "a few excess Insurance Policies that have been eroded or exhausted by pre-Petition settlements and defense costs." Disclosure Statement at 47.

22. The RSA does not require the proceeds of settlements with insurance companies to be segregated by policy year. This would allow such proceeds to be deposited into the Settlement Trust without earmarking the funds for payment of claims for occurrences during particular policy years.

23. This is a particular concern to the Knights, and unfairly prejudices their rights, because there is less available coverage for claims asserted with regard to occurrences during policy years other than the 2018 Policy year. For instance, the aggregate limit for Old Republic Excess Policies has already been exhausted for several other policy years. Old Republic Motion

at ¶ 7. Likewise, a majority of the Insurance Policies during the period from 1983 to 1985 have been exhausted. Disclosure Statement at 46.

24. Any insurance settlement funds arising from the 2018 Policy Year should not be used to satisfy claims relating to occurrences during any other policy years unless and until the Knights' claim is fully paid.

B. The RSA Unfairly Limits the Knights' Ability to Recover Their Claims Against the Atlanta Council from the Atlanta Council's Insurance Coverage.

25. The RSA also inequitably restricts the Knights' ability to recover their claims against the non-Debtor Atlanta Council. Although the Knights' claims against the Atlanta Council would not be released under the Debtors' current proposed plan,[2] the RSA appears to preclude the Knights from being paid the amount of any settlement with the Atlanta Council because it includes this language in Section 7 of Schedule 1 to the Reorganization Term Sheet (the "Term Sheet") governing Treatment of Non-Abuse Litigation Claims ("Schedule 1"): "if the holder of a Non-Abuse Litigation Claim provides a full and complete written release of any claims that such holder of a Non-Abuse Litigation Claim may have against the Local Council related to the Non-Abuse Litigation Claim, then the Local Council will be deemed to have waived any rights it may have against the Specified Insurance Policy with respect to such Non-Abuse Litigation Claim."

26. The Knights' recovery of their non-released claims against the Atlanta Council should not be limited to the Atlanta Council's remaining non-insurance assets. The RSA should not impair the Knights' ability to recover any judgment against, or settlement with, the Atlanta Council from the Atlanta Council's available insurance coverage.

[2] The current proposed Plan provides that "Notwithstanding the foregoing or anything to the contrary herein, (i) with respect to holders of … Allowed Non-Abuse Litigation Claims, nothing in the Plan or the release set forth in Article X.J.4 shall, or shall be construed to, release any claims or Causes of Action against any Local Council…." Fourth Amended Plan, Article X.J.1.a.3.

C. The RSA Affords the Settlement Trust and Others Too Much Discretion Over the Knights' Claims and Denies the Knights a Full and Adequate Opportunity to Protect Their Interests.

27. Section 1 of Schedule 1 provides that the Coalition, TCC and Future Claimants' Representative agree not to oppose any reasonable pre-emergence settlement of a Non-Abuse Litigation Claim that is proposed to be paid from a Specified Insurance Policy that is a primary or umbrella policy. The Coalition, TCC and Future Claimants' Representative should also be prohibited from objecting to reasonable settlements that will be funded from ***excess*** insurance policies.

28. Section 6 of Schedule 1 provides that "[t]he Settlement Trust shall have consent over any post-emergence settlement of Non-Abuse Litigation Claims, such consent not to be unreasonably withheld."

29. Bankruptcy Rule 9019 provides that, upon notice and a hearing, the Bankruptcy Court "may approve a compromise or settlement." Approval should be denied only where "the settlement falls below the lowest point in the range of reasonable." *In re W.R. Grace & Co.*, 475 B.R. 34, 78 (D. Del. 2012).

30. All settlements that meet the Rule 9019 standard should be approved, regardless of the position of the Settlement Trust.

31. Under the Term Sheet, post-effective date settlements may be approved on the terms and conditions set forth in the Settlement Trust Agreement, which is not attached to the Debtors' Motion. Since insurance company settlements could have a critical impact on the

Knights' ability to recover their losses, the Knights should be specifically afforded the right to object to any insurance company settlements.[3]

32. Section 7 of Schedule 1 requires that notice of Non-Abuse Litigation Claims be provided to the Debtors, the Coalition, the TCC, and the Future Claimants' Representative, but does not provide the form and manner of such notice. Although the Debtors, the Coalition, the TCC, and the Future Claimants' Representative all have more than adequate notice of the Knights' claims through their filed proof of claim and stay relief motion, the specific type of notice should be delineated.

RESERVATION OF RIGHTS

33. The Knights hereby reserve their right to modify and/or supplement this Objection, or join in Objections filed by other parties, prior to and at the hearing set for July 29, 2021.

34. The Knights also reserve their right to raise the foregoing objections, as well as any additional objections, to the Debtors' proposed disclosure statement and plan.

SCHNADER HARRISON SEGAL & LEWIS LLP

Dated: July 23, 2021

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[3] The Term Sheet provides that pre-emergence settlements with insurance companies are subject to Bankruptcy Court approval and presumably the Knights would have the right to object to any motion seeking approval of such settlements.

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC,[1]	Case No. 20-10343 (LSS)
	(Jointly Administered)
Debtors.	**Ref. Docket Nos. 545, 702 & 751**

ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY OF COURTNEY KNIGHT AND STEPHEN KNIGHT, JOINTLY AS THE SURVIVING PARENTS OF E.J.K., A MINOR CHILD, AND STEPHEN KNIGHT, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF E.J.K.

Upon the motion (the "Motion") of Courtney Knight and Stephen Knight, jointly as the surviving parents of E.J.K., a minor child, and Stephen Knight as Personal Representative of the Estate of E.J.K. (collectively, the "Movants") for entry of an order (this "Order") granting relief from the automatic stay; and considering any responses to the Motion and the record before the Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is GRANTED as set forth herein; and it is further

ORDERED that:

1. The automatic stay of 11 U.S.C. § 362(a) shall be modified for the limited purpose of permitting the Movants to liquidate their claim(s) through the commencement or continuation of any pending litigation.

2. Movants shall not be entitled to enforce or seek payment on account of the Movants' claim(s), including against any insurers of the Debtors, absent further order of this Court.

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors' mailing address is 1325 West Walnut Hill Lane, Irving, Texas 75038.

3. Except for the limited purpose set forth in paragraph 1 above, the automatic stay shall remain in effect for all purposes, without further Order, and without prejudice to Movants to seek further relief from the automatic stay.

4. Except as otherwise expressly stated herein, nothing in this Order shall be deemed to impair the Movants' claim or construed to impact, impair, affect, determine, release, waive, modify, limit, or expand: (i) the availability of insurance coverage with respect to Movants' claims; (ii) the terms and conditions of any insurance policies; or (iii) any rights, remedies, defenses to coverage, and other defenses of any insurance carrier under or for any insurance policies (including the right of any insurance carrier to disclaim coverage), nor otherwise alter any insurance carrier's existing indemnity payment obligations.

5. Nothing in this order prejudices the right of any party to move to reinstate the stay or to seek additional relief from the stay.

6. The Parties are authorized to take all actions necessary to effectuate the relief granted by this Order.

7. Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is deemed not applicable.

Dated: July 8th, 2020
Wilmington, Delaware

LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

COURTNEY KNIGHT and STEPHEN KNIGHT, jointly as the surviving parents of E J K , a minor child; and STEPHEN KNIGHT, as the Personal Representative of the ESTATE OF E J K ,	)	
Plaintiffs,	)	Civil Action No. 2019-A-68-7
v.	)	
BOY SCOUTS OF AMERICA (CORP) and ATLANTA AREA COUNCIL, INC., BOY SCOUTS OF AMERICA,	)	
Defendants.	)	

ORDER ON PLAINTIFFS' MOTION FOR SANCTIONS
AGAINST DEFENDANTS FOR REPEATED DISCOVERY ABUSES

Proper notice having been given to all parties, Plaintiffs' Motion for Sanctions was heard virtually by the Court on April 12, 2021. Having read and considered Plaintiffs' Motion for Sanctions as well as the response thereto, and having considered the evidence of record and the arguments of counsel at the hearing, the Court finds as follows:

BACKGROUND

Fourteen-year-old Boy Scout E K died on June 25, 2018 when a tree fell on his tent during a storm at Bert Adams Scout Camp ("the Camp") in Covington, Georgia. E 's parents filed this suit against the Boy Scouts of America ("BSA") and its local chapter, the Atlanta Area Council, on January 8, 2019 for negligence, negligence per se, wrongful death, premises liability, punitive damages and the vicarious liability of defendant BSA for the negligence of defendant Atlanta Area Council. Plaintiffs assert that the defendants failed to have

adequate procedures for keeping campers safe during a storm, failed to properly monitor the weather leading up to the storm at issue, and failed to warn campers of the imminent danger posed by the storm. Defendants deny liability and maintain that the magnitude of the storm was unforeseeable.

Motions to compel filed by plaintiffs on May 31, 2019 and August 30, 2019 were heard on December 9, 2019. As a result, an order was entered on December 17, 2019 directing defendants to produce certain documents enumerated in defendants' privilege log as well as all responsive documents related to subsequent remedial measures. Plaintiffs also sought all documents regarding hazardous weather protocols, and based upon defendants' express assertion at oral argument that no such documents were being withheld, the Court found this issue moot. Defendant BSA subsequently filed bankruptcy, from which plaintiffs obtained relief from the stay from the United States Bankruptcy Court for the Northern District of Delaware. Post-stay, additional discovery issues arose resulting in plaintiffs filing a motion for sanctions against defendants for repeated discovery abuses on February 11, 2021. The motion contends that defendants repeatedly violated their discovery obligations by failing to comply with the Court's December 17, 2019 discovery order and by willfully withholding evidence. Defendants argue that the subject evidence was ultimately produced, claim that their actions were justified and deny that sanctions are warranted.

LEGAL STANDARD

"OCGA §9-11-37(b)(2) provides that, if a party fails to comply with a prior order compelling discovery, a trial court may sanction the party by making 'such orders in regard to the failure as are just' and may choose from, among other things, the list of five sanctions specified by OCGA §9-11-37(b)(2)(A)-(E)." American Medical Security Group, Inc. v. Parker,

284 Ga. 102, 105 (663 SE2d 697) (2008). Of those sanctions, plaintiffs seek to have defendants' answer struck and default judgment entered, or, alternatively, defendants precluded from contesting the issues of duty and breach. "What the law contemplates under OCGA § 9-11-37 is a two-step proceeding before the ultimate sanction of dismissal or default judgment may be imposed. First, a motion to compel must be filed and granted; second, after the party seeking sanctions notifies the court and the obstinate party of the latter's failure to comply with the order granting the motion to compel and of the moving party's desire for the imposition of sanctions, the trial court may apply sanctions after giving the obstinate party an opportunity to be heard and determining that the obstinate party's failure to obey was willful." (Citation omitted). North Druid Development, LLC v. Post, Buckley, Schuh & Jernigan, 330 Ga. App. 432, 435-436 (767 SE2d 29) (2014). "A conscious or intentional failure to act is in fact willful, compared to an accidental or involuntary non-compliance. Courts consider the entire history of the proceeding in determining an appropriate discovery sanction." (Citation and punctuation omitted.) Curry v. Conopco, Inc., 354 Ga. App. 692, 694 (840 SE2d 151) (2020).

Additionally, "if a party wilfully and knowingly responds to discovery requests with false answers to interrogatories and/or with false statements unequivocally denying the existence of requested discoverable materials, the trial court is authorized to consider this a failure to respond under OCGA §9-11-37(a)(3), and, as a consequence, immediately sanction the party pursuant to OCGA §9-11-37(b)(2)(A)-(C) and (d)(1)." (Citation omitted.) Howard v. Alegria, 321 Ga. App. 178, 189 (739 SE2d 95) (2013). "It follows that, when a defendant wilfully, knowingly, falsely, consistently and unequivocally denies the existence of requested discoverable documents, the plaintiff is not required to obtain an order compelling discovery before seeking sanctions under OCGA §9-11-37(d)(1). Instead, prior to the imposition of such sanctions, all that is required is a

request for sanctions, notice to all parties, and a motion hearing to determine if the offending party's failure to respond was wilful." (Citation omitted.) Howard at 189.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs contend the defendants violated the Court's December 17, 2019 order compelling discovery with respect to the following categories of documents, or are otherwise subject to sanctions for the following reasons[1]:

A. Scene Photos and Videos

Plaintiffs sent multiple discovery requests seeking photographs and other evidence depicting the campgrounds at the Camp. Defendants and their counsel obtained photographs and videos of the campsite, some specifically depicting the weather conditions in the hours and minutes leading up to the subject storm, but in response to plaintiffs' discovery requests, denied the existence of any photographs depicting the Camp leading up to the incident. Instead, defendants ambushed the plaintiff-parents in this case at mediation – almost two years after the case was filed and over a year after the Court's hearing on discovery matters – with the existence of discoverable photos and videos. Although some of these images and photographs were produced after mediation, some were not produced in a readable format to plaintiffs, and plaintiffs believe additional photos and videos exist which have not been produced.

The photographs and videos at issue are highly relevant, discoverable, not privileged, and relate to pivotal issues in this case including the changing weather conditions leading up to the storm, the severity of the storm, how the storm traveled through various areas of the Camp as it approached the subject campsite, and whether and when alarms were activated. Defendants contend that they ultimately produced the materials after mediation, that the photos and videos

[1] Plaintiffs' request for sanctions regarding defendants' insurance information was raised for the first time in the subject motion. No relief is awarded on that claim.

were not in their "custody and control" as defendants obtained them from non-parties, and that plaintiffs had the names of the non-parties and could have requested the same information from the non-parties themselves.

By these arguments, defendants admit that they intentionally withheld the subject photographs and videos from plaintiffs, at least until mediation. Defendants ignored their obligation under the rules governing discovery to produce these items as soon as defendants obtained them, and defendants' "lack of custody and control" argument is unsupported by either the facts or the law. Defendants' partial production of these items, some of them not in a readable form, after the mediation constitutes a continuing failure of defendants to meet their discovery obligations with respect to these materials. Defendants' actions are conscious, willful, and intentional, and prejudiced plaintiffs by depriving plaintiffs of these materials in preparation for depositions, during examination of witnesses and in consultation with experts during the discovery phase. Defendants' intentionally false responses to plaintiffs' discovery requests for the photos and videos constitutes a total failure to respond to discovery that authorizes the Court to impose immediate sanctions under O.C.G.A. §9-11-37(d)(1); Howard at 189.

B. Hazardous Weather Policies

Plaintiffs requested in discovery all hazardous weather policies in place at the Camp, and moved to compel this information. During the December 9, 2019 discovery hearing on plaintiffs' motions to compel, the Court intended to order defendants to produce any responsive items, but Defendants specifically and pointedly represented to the Court that all such policies had been previously produced. In reliance thereon, the Court's order states that "with respect to Plaintiffs' discovery requests for hazardous weather protocols . . . Plaintiff's Motion to Compel is MOOT as Defendants stated in open court they are not withholding any responsive

documents." See Court's order of December 17, 2019. Nonetheless, the undersigned stated on the record that if defendants discovered that they had not produced all such documents, defendants were ordered to do so.

Subsequently, during a deposition when plaintiffs questioned a witness about the "EAP" acronym identified in an email, it was revealed that defendants possessed a 2015 camp-specific hazardous weather policy referred to as the Emergency Action Plan (or "EAP"). This plan sets forth procedures for several types of emergencies, including "Thunderstorms," and defendants produced it after plaintiffs' discovery of it at the subject deposition. This document is relevant, discoverable, and would have been compelled by the Court in December, 2019 if defendants had been forthright about its existence.

Defendants maintain they did not produce the EAP because they considered it irrelevant and non-responsive, and contend much of it is unrelated to weather and storms. This is unpersuasive given the lengthy discussion during the discovery hearing regarding the discoverability of the Camp's weather policies, and in any event, a document cannot be withheld in discovery because part of it is nonresponsive. Defendants' withholding of the EAP in direct violation of the Court's Order evidences willful, intentional conduct as opposed to an inadvertent or accidental oversight. Plaintiffs were prejudiced by the late production of the EAP because they were forced to take critical depositions without the benefit of the document.

C. Post-Incident Documents

Plaintiffs requested in discovery all documents reflecting post-incident changes to weather policies and procedures. The Court ordered production of the requested information in its December 17, 2019 order. Following December, 2019, defendants undertook efforts to change their weather policies, including collaborating with the National Weather Service to achieve a

"Storm Safe Certification." Most of the post-incident documents reflecting these changes appear to have been generated between December 2019 and June 2020, but defendants failed to identify them until plaintiffs began taking depositions in September, 2020, and deponents began describing these changes. Consistent with defendants' pattern, defendants produced some of the documents weeks later only after having their existence revealed in depositions. Plaintiffs were forced to obtain some of the documents directly from the National Weather Service due to defendants' failure to produce them.

Defendants violated the Court's order by failing to produce the post-incident documents in a timely manner, have no justification for their failure to timely produce the post-incident documents, and the Court finds that defendants' failure to abide by the discovery order was willful. The post-incident documents directly relate to fundamental issues in the case, including the feasibility of alternative methods to monitor and communicate weather events, and plaintiffs were prejudiced by the late disclosure of the post-incident documents because plaintiffs were forced to take multiple depositions without the benefit of the information. Plaintiffs should have had access to the documents so that they could thoroughly prepare for and cross-examine witnesses as well as confer with their experts during the discovery phase.

D. Camp Director's Incident Report

The Court ordered in December, 2019 that all incident reports, especially those that were created as part of the Defendants' policies and procedures, were discoverable. At oral argument, defendants claimed that no reports were created by defendants at the express direction of defense counsel. Despite this representation, during the deposition of the Camp Director on September 9, 2020, it was revealed that the Camp Director had, in fact, generated an incident report on or about June 25, 2018 as part of defendants' set policies.

Defendants argue that the Camp Director's incident report is not actually an incident report and therefore discoverable as such, but is instead a "witness statement." Defendants also maintain that inasmuch as the incident report was produced after plaintiffs discovered it, plaintiffs suffered no harm from defendants having withheld the incident report.

In so doing, defendants have again admitted that they intentionally withheld a discoverable document, the incident report. Defendants' categorization of the Camp Director's nearly-contemporaneous incident report as a "witness statement" and therefore not discoverable is as unconvincing as defendants' argument that the EAP contained "mostly irrelevant information." Defendants' misrepresentations to the Court about the existence of the incident report and defendants' subsequent failure to produce it was both conscious and intentional.

Plaintiffs suffered prejudice from the late disclosure of the Camp Director's Report because the Report sets forth critical facts, such as a timeline of the weather conditions leading up to the events, and it identifies fact witnesses who were not otherwise identified by defendants. Plaintiffs were forced to depose other key witnesses without the benefit of the Report, and should have had the Report in advance of the Camp Director's deposition.

CONCLUSION

As set forth herein, defendants have intentionally, willfully and consciously violated the Court's order of December 17, 2019, and with respect to photographs and videos, willfully, knowingly, and falsely denied the existence of such materials prior to revealing their existence by ambush at mediation. Although plaintiffs have requested that the Court strike defendants' answers in their entirety based on the cumulative effect of their multiple violations of the Court's order and their denial of scene photos and videos, in the exercise of its discretion, the Court declines to impose this most extreme and drastic sanction. Having considered the efficacy of

alternative sanctions, such as allowing the parties to re-depose certain witnesses or imposing a monetary sanction, and finding that such sanctions do not remedy the prejudice caused by defendants' discovery violations, the Court finds that issue preclusion is the appropriate remedy on this record. See O.C.G.A. §9-11-37(b)(2) (A)-(B); see also Ford Motor Company v. Gibson, 283 Ga. 398, 402, (659 SE2d 346) (2008).

Accordingly, at trial, it "shall be taken to be established for the purposes of the action" that (1) the storm that passed through Bert Adams Scout Camp on June 25, 2018 that resulted in the death of E K was foreseeable, and (2) defendants had weather policies and procedures in place at the time of E K 's death, and defendants violated those weather policies and procedures. The jury will be instructed accordingly, and defendants will not be permitted to introduce evidence or make any arguments contrary to the facts as established above. The remaining issues for the jury's determination are causation and damages.

If defendants are in possession, custody, or control of any document, video, or photograph, whatsoever, responsive to plaintiffs' discovery requests and have not produced those documents or have not produced them in a format readable by plaintiffs, defendants shall do so within 20 days of the date of this order to bring themselves in full compliance with the discovery directives already entered by this Court.

SO ORDERED, this 7th day of June, 2021.

Carl W. Bowers

Carl W. Bowers, Judge
State Court of Cobb County

(order submitted modified by the Court)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served true and exact copies of the foregoing

ORDER

(Through Peachcourt) to the following:

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This 7th day of June, 2021.

/s/ Wendy Basnett
Wendy Basnett
Judicial Administrative Specialist
Office of Judge Carl W. Bowers
State Court of Cobb County
Cobb Judicial Circuit

EXHIBIT C

Biographical Information in Support of the Full Value of E.J.K.'s Life

E.J.K. was a young man of exceptional potential. Kind and wise beyond his years, E.J.K. was a brave leader and a shining light. He was a thinker, a doer, and an inventor. His curiosity was insatiable; he was always building and discovering how things worked. He was an accomplished saxophone player, a Rubik's cube master, a voracious reader, a cross-country runner, a dedicated community volunteer, and an honors student selected by his teachers for recognition for his outstanding character and positive contributions to his school community.

Family members as well as countless friends and community members whose lives E.J.K. touched paint a powerful picture of E.J.K.'s remarkable talents and ambitions. Not only will E.J.K.'s kindness, intelligence, and determination clearly support a high value for the economic component of his life, the value of the non-economic component of his life is limitless. In other words, damages for the full value of E.J.K.'s life could easily support a record-breaking jury verdict at trial. An interview of E.J.K.'s father by the local ABC news affiliate (link to the interview will be provided upon request) provides a sampling of the type of testimony that will be presented to the jury at trial in support of the full value of E.J.K.'s life.

At the time of his death, E.J.K. had achieved the rank of Life Scout and was inducted into the Order of the Arrow, which recognizes Scouts who best exemplify the Scout Oath and Law in their daily lives. He was working toward becoming an Eagle Scout, like his father. E.J.K. stood by his ideals and believed that everyone should have a voice. He aspired to be an environmental engineer and to use his skills both to improve the world and to address issues of gender and racial inequality as well as environmental challenges across the globe.

E.J.K. had big dreams, and his motto – "Start everything with kindness and the end will be okay" – has evolved into a poignant legacy that continues to be impactful even after his

untimely death. Based upon E.J.K.'s plans to utilize kindness to solve long-term, systemic problems for his Eagle Scout Service Project, the nonprofit organization, Kindness to Action, was formed in E.J.K.'s memory to inspire people around the world to turn kindness into action to help others. In celebration of what would have been E.J.K.'s seventeenth birthday on January 21, 2021, Kindness to Action created special Kindness Coins to be awarded by Kindness Ambassadors around the world to recognize and encourage people who embody kindness, generosity, and compassion. To date, nearly 250 Kindness Coins have been distributed within the United States with additional coins reaching as far as South America, Europe, Asia, and Australia. More information on Kindness to Action can be found by visiting its website (which can be provided upon request.)

This is merely a snapshot of who E.J.K. was, what he was determined to become, and how his tragically short life continues to have an impact. Although the list of E.J.K.'s accomplishments is long, his countless ambitions and full potential will never be realized. Additionally, his untimely death has left a permanent hole in his family, one which will never be filled.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC[1],	:	Case No. 20-10343 (LSS)
	:	*Jointly Administered*
Debtors.	:	

CERTIFICATE OF SERVICE

I, Kristi J. Doughty, hereby certify under penalty of perjury that on July 23, 2021 I caused a true and correct copy of the *Objection to Debtors' Motion for Entry of an Order Pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code, (I) Authorizing The Debtors To Enter Into And Perform Under The Restructuring Support Agreement, And (Ii) Granting Related Relief Filed* filed on behalf of Courtney Knight and Stephen Knight, jointly as the surviving parents of E.J.K, a minor child, and Stephen Knight as Personal Representative of the Estate of E.J.K (hereinafter "Motion") with exhibits, to be electronically filed and served via CM/ECF to all parties requesting electronic service in this case and upon the parties listed below via electronic mail:

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[1] The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors' mailing address is 1325 West Walnut Hill Lane, Irving, Texas 75038.

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Dated: July 23, 2021

By: /s/ Kristi J. Doughty

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