

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
PINELLAS DIVISION

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Sammy Adams,  
Plaintiff,

v.

No. A-11-CA-2356—CHR

Xtreme, S.A. and  
Sports.com Inc.,  
Defendants.

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Deposition of Sammy Adams

1 Counsel for Defendant Xtreme: Just for the record, this deposition of Plaintiff Sammy  
2 Adams is being taken for the limited purpose of obtaining discovery relevant to the two  
3 pending motions in this matter. Xtreme takes this deposition for this limited purpose and  
4 without waiver of its rights to fully depose Mr. Adams about all of the other matters raised  
5 by the pleadings in this case on a later date. Is that right?  
6

7 Plaintiff counsel: That is correct. That is our understanding for any depositions taken at  
8 this time pursuant to the Court's recent order. So stipulated.  
9

10 (Witness was sworn.)  
11

12 Q: (Xtreme counsel) Alright, let's begin. Please state your name for the record.  
13

14 A: (Adams) Sammy Adams.  
15

16 Q: Where do you live?  
17

18 A: Gulfport, Stetland, which is in Pinellas County.  
19

20 Q: How long have you lived there?  
21

22 A: By "there" I don't know if you mean in my current residence. But I have lived in  
23 various houses in the Gulfport area my entire life, except for some years obtaining my  
24 formal education.  
25

26 Q: What is your date of birth?  
27

28 A: February 15, 1963. I was born in St. Petersburg, Stetland.

1 Q: Where did you get your formal education?  
2  
3 A: University of Stetland is where I got my B.A. and later obtained my Ph.D. at the same  
4 school. I teach now at St. Petersburg Community College.  
5  
6 Q: Tell me about your climbing activities.  
7  
8 (Adams Counsel) I object. This discovery is not supposed to be about the merits of the  
9 lawsuit, just the two pending motions.  
10  
11 (Xtreme Counsel) I understand that. I'm just asking about a few background questions  
12 here.  
13  
14 (Adams Counsel) Go ahead Sammy. You can answer.  
15  
16 A: I began as a hiking enthusiast. There are some trails in national forests in Stetland.  
17 Later I would drive nearby to Georgia and do some hiking in the mountains. I enjoyed  
18 hiking at higher altitude and began going out west to Colorado and places like that for  
19 hiking. Eventually I decided that what I really loved was not only hiking but doing some  
20 real climbing at higher altitudes. I read a magazine article about a man who had climbed to  
21 the highest point in all 50 states. Now, of course, in some places like Stetland you can do  
22 that by climbing the stairs of the tallest office building. But it is actually quite a challenge in  
23 many places, including some states you don't think of as having mountains.  
24  
25 (Xtreme Counsel) Q: Please continue  
26  
27 A: Well I never actually made it a goal to do what that other guy did but I was curious  
28 about climbing in different locations. Eventually I just started planning multiple trips every  
29 year where I could climb to the highest points in various places. I first went to obvious  
30 places like Colorado, Utah, Wyoming, Montana, Idaho, etc. I've been to many of the eastern  
31 coast states starting in Maine and working my way all the way back down to Stetland. I've  
32 also climbed in Washington, Oregon, California, Nevada and New Mexico. Many of the  
33 Midwestern states could be done very quickly so I did them on various trips to visit my  
34 family in that part of the country. More recently I began to work my way West along the  
35 Gulf Coast states. This is what led me to Texas. It has a surprisingly tall mountain—  
36 Guadalupe Peak—with the imposing El Capitan face.  
37  
38 Q: Okay, has some of that climbing involved any technical climbing and rappelling?  
39  
40 A: Yes, some of it depending upon the terrain. I've really begun to enjoy that type of  
41 climbing activity the best. Until this all happened.  
42  
43 Q: Have you used climbing harnesses previously—before this incident that we are here  
44 about?  
45

1 A: Yes, quite a few times. I had only had one harness previously but used it so much  
2 that I began to worry about its condition. That is what led me to purchasing the SkyNet  
3 harness from your client.  
4  
5 Q: Object to the last sentence as unresponsive. Now Sammy, if I may call you that,  
6 where did you first learn about the SkyNet?  
7  
8 A: I was on a climbing website—I think it was mountainzone.com—looking at pictures  
9 of climbing and reading some articles about some peaks in a few states. I'm pretty sure  
10 while I was on that site I saw an ad about equipment made by Xtreme, which I clicked on. I  
11 was thinking of upgrading some gear and the name sounded rather intriguing.  
12  
13 Q: Just so I can be clear, you never received any direct solicitations or mailed brochures  
14 or any contact like that from Xtreme did you?  
15  
16 A: Nobody from Xtreme called or sent me anything, if that's what you're asking.  
17  
18 Q: And you'd never seen any Xtreme commercials on TV or anything like that?  
19  
20 A: Correct.  
21  
22 Q: What did you see when you went to the Xtreme website?  
23  
24 A: Information about a bunch of surfing and climbing products.  
25  
26 Q: You didn't see anything on that website suggesting Xtreme was based in Stetland or  
27 had any operations in Stetland, did you?  
28  
29 A: I assumed they were some large worldwide company with operations and sales  
30 everywhere.  
31  
32 Q: Did the website say that?  
33  
34 A: I don't recall any specific words to that effect but it looked like a legit company with  
35 equipment that could be used anywhere.  
36  
37 Q: Well you wouldn't use their climbing gear in a flat beach state like Stetland, would  
38 you?  
39  
40 A: I don't know where you might use their climbing gear. Anyplace you wanted to  
41 climb I suppose.  
42  
43 Q: Have you ever used a climbing harness in Stetland?  
44  
45 A: Not that I can recall specifically but I have ordered climbing harnesses in Stetland.  
46

1 Q: Which ones?  
2  
3 A: My original harness I purchased from my home, on the internet, and the defective  
4 SkyNet harness that almost killed me was purchased from my home in Stetland.  
5  
6 Q: I'll ignore the cheap unsolicited jabs at my client's product since we're not focusing  
7 on the merits today. When you say you purchased the SkyNet harness from your home,  
8 you mean that your computer you were using was located in your home?  
9  
10 A: I guess that's right.  
11  
12 Q: And you actually purchased it from Sports.com rather than Xtreme?  
13  
14 A: I wasn't sure exactly which company I purchased it from at the time. All I know is I  
15 went to the Xtreme website and clicked a few items on there, found all their lies about the  
16 safety features of the SkyNet, and was able to order it a few clicks later.  
17  
18 Q: Were you aware that Xtreme does not engage in any retail sales of its products,  
19 including the SkyNet?  
20  
21 A: If that were true I wasn't aware of it.  
22  
23 Q: Do you recall clicking on a store locator button on the Xtreme website?  
24  
25 A: Yes that's right. And it brought me to a page where I ordered the SkyNet.  
26  
27 Q: Do you recall the name Sports.com on that webpage you were sent to?  
28  
29 A: Well I didn't recall that at first after the accident. But my attorney asked me for  
30 documentation of the purchase and I found the email invoice from Sports.com. I wasn't  
31 sure of the relationship between Sports.com and Xtreme—I figured Xtreme owned  
32 Sports.com.  
33  
34 Q: And that's the basis for your decision to sue Sports.com?  
35  
36 A: My attorney made that decision after I told her all the facts.  
37  
38 Q: When you made the purchase from Sports.com did you remember getting the email  
39 confirmation?  
40  
41 A: Yes I'm sure I did.  
42  
43 Q: And is it your habit to read such emails upon receipt?  
44  
45 A: Eventually.  
46

1 Q: And did you read the Sports.com email?  
2  
3 A: I'm sure I did, just to be sure they got the purchase right.  
4  
5 Q: And did everything in that email appear to be in order, to be acceptable to you?  
6  
7 A: I suppose. They didn't tell me the truth about the fact that the SkyNet was unsafe  
8 for a normal adult.  
9  
10 Q: But everything else in the email was okay?  
11  
12 A: I guess.  
13  
14 Q: Why did you decide to buy the SkyNet?  
15  
16 A: It looked pretty nice and had this new feature they promised me would make it even  
17 safer to use at high altitudes—the Velcro.  
18  
19 Q: Did you consider Guadalupe Peak to be a “high altitude” climb?  
20  
21 A: Depends on your perspective. Nearly 9,000 feet up to someone who lives at sea  
22 level is pretty high altitude. High enough to about kill me.  
23  
24 Q: Did you understand the Velcro feature's safety was related to the speed and ease by  
25 which a climber at high altitude could secure it—when oxygen might affect their dexterity  
26 and thinking process?  
27  
28 A: That would make sense.  
29  
30 Q: Was your thinking process impaired on the day when you had your accident?  
31  
32 A: I don't think so.  
33  
34 Q: Now back to the purchase of the product, where was it delivered?  
35  
36 A: I had it shipped to the address in Texas where I was staying for my upcoming trip. I  
37 thought I'd be there in time to receive it but that if I had it delivered to my regular address  
38 it might not come in time.  
39  
40 Q: Did you consider paying extra for overnight shipping so you could receive the  
41 product in Stetland?  
42  
43 A: Yes but I'm a teacher. There was no reason to pay the higher shipping price.  
44  
45 Q: Just so we're clear, you advised the online retailer to deliver the product in Texas  
46 and not Stetland?

1 A: Yes, of course. I don't understand your point.  
2  
3 Q: Did you ever tell Xtreme you were a Stetland resident?  
4  
5 A: I would have had my Stetland address as my billing address.  
6  
7 Q: But that was the billing address you gave to the retailer—Sports.com—and not  
8 Xtreme, right?  
9  
10 A: I didn't distinguish between those companies at the time. I went to the webpage that  
11 Xtreme sent me and I inputted my billing address when I ordered the product. That billing  
12 address was right here in Gulfport, Stetland.  
13  
14 Q: And you told the same retailer though that you wanted to use the product in Pine  
15 Springs, Texas, didn't you?  
16  
17 A: That was the shipping address I gave them, yes.  
18  
19 Q: You also agreed that you would never sue the retailer if you were hurt, didn't you?  
20  
21 A: I have no idea what you're talking about.  
22  
23 Q: Let me show you what's been marked as Exhibit "1," which is a printout from an  
24 Xtreme webpage. Do you recognize this?  
25  
26 A: Yes, it looks like the page I saw when I went to your client's website.  
27  
28 Q: Do you see anything on that page that says that Xtreme does business in Stetland?  
29  
30 A: Well I see there is a store locator link at the top where a consumer from anywhere  
31 in the world can go to buy their products.  
32  
33 Q: That's unresponsive. Do you see any reference on this webpage to Stetland?  
34  
35 A: Obviously no.  
36  
37 Q: Let me show you Exhibit "2." Do you recognize this?  
38  
39 A: It's the email I got when I bought your product.  
40  
41 Q: Let me also show you Exhibit "3"—another website printout from Sports.com. Do  
42 you recognize this page?  
43  
44 A: Looks pretty similar to that first exhibit you showed me. I guess this is the SkyNet  
45 information on the page Xtreme directed me to.  
46

1 Q: Is there anything misleading about the SkyNet on Exhibit 3?  
2  
3 A: It says that the product will be safe in any “style of high-altitude climbing during any  
4 season.” Obviously that wasn’t true in my case.  
5  
6 Q: I’m sorry about your accident. But wouldn’t you agree with me, generally, that just  
7 because someone has an accident with a product doesn’t mean that the seller misled the  
8 consumer about the product’s safety?  
9  
10 A: Well if you’re asking a hypothetical question, my hypothetical answer is that might  
11 be true in some circumstances.  
12  
13 Q: And isn’t it true that Exhibit 3 contains the same representations that were on  
14 Exhibit 1—that Sports.com didn’t tell you anything about the SkyNet that Xtreme’s website  
15 didn’t already tell you?  
16  
17 A: They appear pretty similar.  
18  
19 Q: Just a couple more questions. Sammy, where did your accident happen?  
20  
21 A: Guadalupe Peak.  
22  
23 Q: That’s in Texas, right?  
24  
25 A: Of course.  
26  
27 Q: Where were you taken for treatment following the accident?  
28  
29 A: A hospital in El Paso.  
30  
31 Q: How long were you in Texas before you returned back to Stetland?  
32  
33 A: Maybe a week after the accident.  
34  
35 Q: I also have here a couple of photos printed out on what’s been marked as Exhibit  
36 “4.” These were provided to me by your counsel this morning. What are these photos of?  
37  
38 A: These are photos of Guadalupe Peak and, the smaller picture shows El Capitan,  
39 where I fell.  
40  
41 Q: Did you consider filing your lawsuit in Texas?  
42  
43 A: Why should I? I live here. My lawyer said this is where the suit would be filed.  
44  
45 (Adams Counsel) I object to any more questions that go into my privileged discussions with  
46 my client or our work product thoughts as to case strategy.

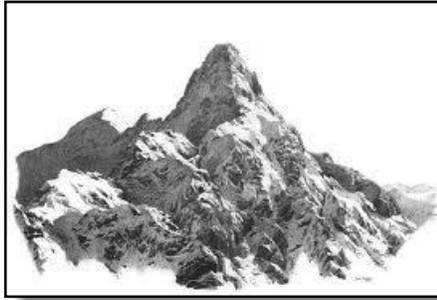
1

2 (Xtreme Counsel) It doesn't matter. I think we're done here for now.

3

4 Off the record.

# Xtreme



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Shoes  
Helmets  
Ropes  
Cords  
Slacklines  
Webbing  
Carabiners  
Harnesses



## All-New SkyNet

The fully adjustable SkyNet climbing harness can be used for nearly any style of high-altitude climbing during any season.

- Padded, bullhorn-shaped waistbelt is ergonomically designed
- Adjustable leg loops are designed for quick entry/exit
- New Velcro fastener for safe 'n secure high-altitude use

# YOUR ORDER HAS BEEN RECEIVED!!

Sports.com

Sent: March, 1, 2011  
To: Adams, Sammy

Dear Sammy Adams:

Thank you for ordering from Sports.com. The details of your order are below:\*

For "USPS Priority Mail" shipped items, processing times may vary per product. Generally allow 7 to 10 business days for your order to arrive to you. We are unable to guarantee any delivery times, regardless of the destination and delivery method.

It is our mission to provide you with the latest, greatest in safe climbing gear while maintaining a smaller holistic approach toward retail. As an authorized agent for Xtreme products, we are proud of the products we sell and promise to stand behind them at all times. If you are ever in any way dissatisfied with your purchase, please return the product for a full refund.

Billing and Shipping Information:

Billed to:  
Sammy Adams  
981 Gulf Blvd.  
Gulfport, Stetland 33707

Shipped to:  
Sammy Adams  
12 Notrees Street  
Pine Springs, TX 79847

Order No. 189459  
Order Date: 03/01/11  
Product Name: SkyNet Safety Harness by Xtreme, S.A.  
Qty: 1  
Unite Price: \$127.00  
Sales Tax: \$12.00  
Total Amount: \$139.00

\*By accepting this product, purchaser agrees that in the event of any litigation arising out of this sale, that Texas law will govern any and all claims. Further, purchaser acknowledges that Sports.com does not manufacture the goods sold and that under Texas law seller is not liable for any defects. Your sole recourse against Sports.com is a full refund of your purchase.

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### Climbing Products

All-New Xtreme

## SkyNet

The fully adjustable SkyNet climbing harness can be used nearly any style of altitude climbing any season.



for  
high-  
during

- Padded, bullhorn-shaped waistbelt is ergonomically designed
- Adjustable leg loops are designed for quick entry/exit
- New Velcro fastener for safe 'n secure high-altitude use
- Retail Sales Price \$127.00

*Deposition Exhibit 4*

