

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

Magistrate Judge: Chris M. McAiley

HOWARD ADELMAN and
JUDITH SCLAWY, as
Co-Personal Representatives of THE
ESTATE OF MICHAEL SCLAWY-
ADELMAN,

Plaintiffs

vs.

BOY SCOUTS OF AMERICA, a foreign
corporation, THE SOUTH FLORIDA
COUNCIL, INC., BOY SCOUTS OF
AMERICA, PLANTATION UNITED
METHODIST CHURCH, HOWARD K.
CROMPTON, individually, and
ANDREW L. SCHMIDT, individually,

Defendants

JOINT DISCOVERY PLAN

Pursuant to the Magistrate's Order Following Discovery Conference [DE # 80], the Order Requiring Response [DE # 100] and the Omnibus Order [DE # 111] the parties submit the following discovery plan to the Court:

Outstanding Discovery:

Depositions

The following depositions have recently been set:

- (1) Howard Adelman and Judith Sclawy on 2-7-2011 and 2-8-2011;
- (2) Fed. R. Civ. P. 30(b)(6) designation for South Florida Council on 2-14-2011;

- (3) Jeff Hunt on 2-14-2011;
- (4) Joshua Crist on 2-18-11;
- (5) John Anthony on 2-18-11;
- (6) Joe Knight on 2-21-2011;
- (7) Fed.R. Civ.P. 30(b)(6) designation for Boy Scouts of America on 2-23-2011,
2-24-2011 and 2-25-2011
- (8) Andrew Schmidt on 3-7-2011;
- (9) Howard Crompton on 3-8-2011;
- (10) Fed. R. Civ. P. 30(b)(6) designation for Plantation United Methodist
Church on 3-9-11.
- (11) Rev. Timothy Smiley on 3-10-11; and

Defendant, South Florida Council has tentatively reserved 2.5 days (as requested by the Plaintiffs) on February 14, 18 and 21 to depose South Florida Council's corporate representatives: Joshua Christ, Jeff Hunt, John Anthony and Joe Knight. Defendants will confirm those dates of availability no later than January 28, 2011. The particular depositions that take place on those three dates will be determined based on the availability of those four witnesses. However, South Florida Council agrees to provide the exact order of depositions for those individuals no later than February 7, 2011.

Counsel for Defendants, Boy Scouts of America and South Florida Council, and Counsel for the Plaintiffs spoke today, January 25, 2011 to discuss objections raised to some of the areas of inquiry and document requests as listed in the various notices of deposition duces tecums propounded on Boy Scouts and South Florida Council. Counsel also discussed objections raised by South Florida Council to documents requested from Joshua Christ, Jeff Hunt, John Anthony

and Joe Knight. While both sides were able to limit some areas of dispute, no complete agreements could be reached on the objections raised to the Notices of Depositions Duces Tecums. Thus, Boy Scouts of America and South Florida Counsel will file the appropriate motions for protective orders no later than February 2, 2011. Those defendants will acknowledge the discussed limitations made by both sides, which will hopefully assist this Court in ruling on the objections.

Plantation United Methodist Church discussed some objections for the categories of documents listed in Plaintiff's Notice of Deposition Duces Tecum to the Fed. R. Civ. P. 30(b)(6) designation and Plaintiff's Notice of Deposition Duces Tecum for Timothy Smiley. These objections will be negotiated between the parties and the appropriate motions filed if necessary.

The parties agree that many or all of the following depositions shall take place

1. Collier County Sheriff Officer Kevin O'Neill
2. Collier County Deputy J.R. Comings
3. Collier County Deputy Miller
4. Collier County Medical Examiner, Dr. Borges
5. EMT Armando Pina
6. Big Cypress Aviation Manager, Mike O'Leary
7. Chase Crompton (Boy Scout)
8. Kristopher Leon (Boy Scout)
9. Kristopher Leon's mother
10. Park Ranger Wynn Carney
11. Park Ranger Gary Sheffler
12. Park Ranger Drew Gilmour

13. Park Ranger Edward Clark
14. Elisabeth Sclawy-Adelman
15. Michael Sclawy-Adelman's Pediatrician
16. Dr. Lee Hearn, Dade Toxicologist

The parties have further agreed that counsel will make themselves available for specific blocks of time between now and the April discovery cut-off.

Counsel for the Plaintiffs provides the following dates of availability in addition to those dates on which depositions have already been set as listed above: January 24-February 4; February 28-March 4; March 10-30 and April 1-8.

Counsel for Boy Scouts of America and South Florida Counsel provides the following dates of availability in addition to those dates on which depositions have already been set as listed above: March 14-22; April 4-29. If necessary, depositions on the following dates can be covered by an associate from the firm: February 7, 9, 11, 14-18, 22-25; March 1-4, 7-11, 21-25, 28-31 and April 1-3.

Counsel for Plantation United Methodist Church provides the following dates of availability in addition to those dates on which depositions have already been set as listed above: March 14-16, 21-24, 28-30 and April 4-6.

Counsel for Crompton and Schmidt provides the following dates of availability in addition to those dates on which depositions have already been set as listed above: March 16, 22; April 4-12, 14-29.

During that time, the above depositions (along with some depositions that haven't been agreed upon as of this time) can take place when the witnesses are available. The parties initially

stipulated that each side would be allotted 20 depositions. However, the parties have since agreed that the parties may stipulate to increase the number of depositions per side if necessary.

There are no further discussions of other depositions at this time. However, the parties acknowledge the potential necessity for setting further depositions as discovery progresses. None of the parties at this moment have all of the information necessary to fully know and evaluate every aspect of this case to guarantee that no further depositions or written discovery will be needed.

Written Discovery:

Defendants, Boy Scouts of America and South Florida Council, propounded supplemental requests for production and interrogatories on January 24, 2011 to the Plaintiffs.

The Plaintiffs propounded supplemental Interrogatories to all named defendants on January 13, 2011. Plaintiffs propounded 2nd requests for production on Boy Scouts of America, South Florida Council and Plantation United Methodist Church that same day. Plaintiffs propounded 3rd requests for production on Howard Crompton and Andrew Schmidt that same day as well.

Plaintiffs have produced copies of all the materials promised at the November 24, 2010 document inspection. Defendants, Boy Scouts of America, South Florida Council, Howard K. Crompton and Andrew L. Schmidt all moved to compel the production of the documents prior to them actually being produced. However, due to the voluminous nature, those Defendants have not had an opportunity to cross-reference the documents requested on November 24, 2010 to be produced with those actually produced. Thus, those Defendants do not believe their respective Motions are moot, but agree that they are not ripe for adjudication until the parties have had an

opportunity to review the records. Those Defendants merely reserve the right to compel production of all documents requested during the November 24, 2010 inspection should the same become necessary.

Plaintiffs sent a series of correspondence to counsel for all named Defendants requesting that the Defendants provide better answers to interrogatories and better responses to requests for production. Counsel for the Plaintiffs and for Boy Scouts of America and South Florida Council communicated on January 25, 2011 to discuss these discovery issues. Counsel for the Plaintiffs and for Boy Scouts of America and South Florida Council were able to work out many of the discovery disputes. For discovery disputes that were unresolved, counsel for the Plaintiffs will file the appropriate motion(s) with the Court no later than February 4, 2011.

Plaintiffs and defendants also intend to propound additional written discovery. Although some will likely go out shortly, other discovery will likely be necessitated in follow up to the upcoming depositions.

Areas of Dispute:

The parties remain in dispute pertaining to the “GPS issue,” which has been briefed in part. *See* [DE #s 103, 105]. Crompton and Schmidt will file a GPS Memorandum in Response to Plaintiff’s Supplemental Response. Plaintiffs reserve the right to file a Reply.

As it specifically relates to the motion for preservation of evidence filed by Boy Scouts of America and South Florida Council, the parties have come to an agreement. The parties will shortly submit an Agreed Order, which reads, “All physical evidence that any party wishes to conduct non-destructive or destructive testing on must be preserved. Notification to all parties and proposed protocol for testing must be provided at least ten days prior to testing.”

While the parties are in agreement to this general Order, the parties agree that the issue surrounding preservation and testing of cell phones and personal computers is explicitly excluded from the above Order, because the Court must adjudicate the dispute. *See* [DE #s 85, 86, 103, 108].

However, the parties have made some progress with regard to emails, which were discussed during the January 24th conference call with all counsel. The discussion as to e-mails was between counsel for the Plaintiffs and counsel for Crompton and Schmidt. The Plaintiffs would agree to preserve emails related to hiking, scouting, and Eagle Scouting and from Howard Crompton and Andrew Schmidt from January 1, 2009 through the present and requests that the other parties do the same. Boy Scouts of America and South Florida Council represents that it will preserve emails sent to or received from the Plaintiffs from January 1, 2009 through the present. Boy Scouts and South Florida Council object to preserving every internal Boy Scouts of America email that may concern hiking, Eagle Scouting, scouting, etc. as overbroad and harassing. The agreement of the parties to preserve e-mails does not constitute a waiver of the right to object to their production. At this time, Plaintiffs have agreed to preserve Michael's cell phone. Plaintiffs have requested the provision of Crompton and Schmidt's cell phone numbers and requested the agreement for preservation of their phones.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that January 25, 2011 I electronically filed the foregoing with the Clerk of the Southern District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

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