

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 10-CV-22236-ASG

HOWARD ADELMAN AND JUDITH SCLAWY  
as Co-Personal Representatives of the  
ESTATE OF MICHAEL SCLAWY-ADELMAN,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA; et al

Defendants.

---

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY FROM THE BOY SCOUTS OF  
AMERICA AND SOUTH FLORIDA COUNCIL, INC.**

Plaintiffs, HOWARD ADELMAN AND JUDITH SCLAWY, respectfully move for the entry of an Order compelling discovery from the Boy Scouts of America and South Florida Council, Inc., Boy Scouts of America and state:

1. In response to the identical initial Request for Production served upon both Defendant Boy Scouts of America and Defendant South Florida Council, these Defendants objected to items number 1, 3, 4, 9 and 10 and provided incomplete and/or unresponsive answers to items 2, 5, 6, 7, 8, 12, 13, 14, 15, 18 and 19.

2. Counsel for the parties conferred and reached partial agreement on a number of these requests. Defendants agreed to provide better responses to items 1, 2, 3, 4, 17 and 18, and have clarified their responses to items 5 through 8 and 12 through 15. See correspondence between the parties attached as **Composite Exhibit 1**. Pending the determination of the sufficiency of the Defendants' supplemental responses to the above items, request numbers 9, 10 and 16 remain in dispute. See individual discovery requests still in dispute attached as **Exhibit 2**.

3. Plaintiffs' minor son, Michael Sclawy-Adelman, died during a 20 mile Boy Scout

sanctioned hike in the Big Cypress National Preserve while under the care and supervision of two Boy Scout approved Scoutmasters. Among the issues raised by this litigation and alleged in the Plaintiffs' pleading are the Defendants':

- Failure to adopt and implement adequate guidelines for the planning, preparation, and conduct of Boy Scout hikes;
- Failure to adopt and implement adequate guidelines for recognizing and responding to emergency situations on Boy Scout hikes;
- Failure to adopt and implement adequate guidelines and standards for the selection of Scoutmasters;
- Failure to adopt and implement adequate policies, protocols, and procedures for the planning, preparation, and conduct of Boy Scout hikes;
- Failure to adopt and implement adequate policies, protocols, and procedures for recognizing and responding to emergency situations of Boy Scout hikes;
- Failure to adopt and implement adequate policies, protocols, and procedures for the selection of Scoutmasters;
- Failure to provide proper instruction and training to local councils, charter organizations, districts, and troops relative to the planning, preparation, and conduct of Boy Scout hikes;
- Failure to provide proper instruction and training to local councils and charter organizations, districts, and troops relative to recognizing and responding to emergency situations on Boy Scout hikes;
- Failure to provide proper instruction and training to local councils and charter organizations, districts, and troops relative to the selection of Scoutmasters;
- Failure to provide adequate and proper instruction and training to Scoutmasters relative to the planning, preparation, and conduct of Boy Scout hikes;
- Failure to provide adequate and proper instruction and training to Scoutmasters relative to recognizing and responding to emergency situations on Boy Scout hikes;
- Failure to provide adequate and proper supervision to local councils, charter organizations, troop units, and Scoutmasters relative to the planning, preparation, and conduct of Boy Scout hikes;
- Failure to provide adequate and proper supervision to local councils, charter organizations, troop units, and Scoutmasters relative to recognizing and responding to emergency situations

on Boy Scout hikes;

- Failure to provide adequate and proper supervision local councils, charter organizations, relative to the selection of Scoutmasters;
- Failure to properly review and evaluate the performance of Scoutmasters;
- Failure to properly plan and prepare for this hike;
- Failure to obtain proper and adequate weather information;
- Failure to properly conduct the activity;
- Failure to take the appropriate steps to prevent, recognize, combat and deal with heat related problems during the hike;
- Failure to have proper equipment for the hike; and
- Improperly selecting, evaluating, training and retaining the Scout Masters running the hike.

4. With respect to **Request No. 9**: This request for production is not overbroad, but rather, is directly related and relevant to the issues raised in the Amended Complaint. Policies, procedures, guidelines, etc. which the Boy Scouts may have created, promulgated and/or implemented for the safety of boy scouts with respect to any exertional or outdoor activities would be highly relevant to the issues in this case, if for example, those policies, procedure, guidelines, etc. were not created, promulgated and/or implemented or followed for all such scouting activities where children are potentially at risk.

5. The Boy Scout Defendants' contend that the Plaintiffs' discovery must be solely limited to "hiking" activities, first aid, and/or merit badges is clearly unsupportable under the broad and liberal standards governing discovery. The policies, procedures, guidelines, and any other documentation related to the training, selection, evaluation and retention of Scoutmasters who hold the safety and lives of children in their hands during all exertional and outdoor activities are relevant and may lead to admissible evidence.

6. The Plaintiffs contend that appropriate and adequate policies, procedures, and guidelines should be in place to ensure the safety and well being of the children participating in

scouting activities and that those policies, procedures, guidelines, etc. should be consistent across all exertional and/or outdoor scouting activities, not just hiking. Children participating in all exertional and/or outdoor scouting activities are equally at risk for serious injury or death due to heat stroke or exposure to the elements, regardless of whether they are biking, camping, trekking or attending a jamboree as reflected by the news article attached as **Exhibit 3** relating to hundreds of cases of heat related injuries occurring during the 2005 National boy Scout Jamboree.

7. Furthermore, a crucial issue in this case is the amount of involvement and/or control the Boy Scout Defendants have and/or may exercise with respect to the charter organizations, the local councils, and the troop level Scoutmasters and the actual troop activities. The South Florida Council contends that neither it nor the Boy Scouts of America have any involvement or control over what occurs at the Scoutmaster and/or Troop level of the organization and went to great lengths in their Motion to Dismiss Counts VII and VIII (DE 5) to argue that position.<sup>1</sup>

Plaintiffs are entitled to discovery which will lead to admissible evidence related to the control and participation issues. The discovery sought in Request No. 9 may well reflect the fallacy of the Boy Scouts' position.

8. With respect to **Request 10,16 and Interrogatories 9 and 10**: Plaintiffs believe that there have been numerous prior incidents resulting in injuries (which required medical care) and/or deaths to Boy Scouts while the boys were participating in outdoor scouting activities.<sup>2</sup> Complaints regarding those incidents are highly relevant to the Boy Scout Defendants' subsequent implementation of safety policies, procedures and training, or the lack thereof.

9. Based upon information available in the media, the Plaintiffs contend that at least 32 scouts and Scout leaders have died in the past five years in various outdoor activities, including deaths from heatstroke, falls, lightening, drowning, electrocution and burns, among other causes. The Boy Scouts zealously try to guard and keep secret information regarding these deaths, and non-

---

<sup>1</sup> After a hearing on that motion, Judge Gold denied the Boy Scouts of America's and the South Florida Council's motions to dismiss.

<sup>2</sup> The numerous heat related incidents at the 2005 jamboree made national news.

death injuries. Information related to any such complaints is highly relevant to the issues in this case.

10. All of the discovery the Plaintiffs seek in the disputed requests are relevant to the issues raised in the Amended Complaint and are permissible discovery under the Federal Rules of Civil Procedure. For these reasons and those set forth in the Plaintiffs' Memorandum of Law filed simultaneous with this motion, the Plaintiffs respectfully request that the Court grant their motion and enter an Order compelling production from Boy Scouts of America and The South Florida Council.

Respectfully submitted,

/s/ Robert D. Peltz

**ROBERT D. PELTZ**

Florida Bar No. 220418

LEESFIELD & PARTNERS, P.A.

*Counsel for Plaintiffs*

2350 South Dixie Highway

Miami, FL 33133

Telephone: 305-854-4900

Facsimile: 305-854-8266

e-mail: [peltz@leesfield.com](mailto:peltz@leesfield.com)

#### **CERTIFICATE OF GOOD FAITH CONFERENCE**

I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues raised in the motion but was unable to resolve the issues after reasonable efforts.

/s/ Robert D. Peltz

**ROBERT D. PELTZ**

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 4, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Robert D. Peltz

**ROBERT D. PELTZ**

**SERVICE LIST**

**HOWARD ADELMAN AND JUDITH SCLAWY-ADELMAN**

**VS.**

**BOY SCOUTS OF AMERICA, et al**

**CASE NO.: 10-CV-22236-ASG**

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA**

<p><b>IRA H. LEESFIELD</b> <b>ROBERT D. PELTZ</b> LEESFIELD &amp; PARTNERS, P.A. 2350 S. Dixie Highway Miami, Florida 33133 Telephone: 305-854-4900 Facsimile: 305-854-8266 E-mail: <a href="mailto:leesfield@leesfield.com">leesfield@leesfield.com</a> <a href="mailto:peltz@leesfield.com">peltz@leesfield.com</a> <i>Attorneys for the Plaintiffs</i></p> <p><b>FREDERICK E. HASTY, III</b> WICKER, SMITH, O'HARA, MCCOY, GRAHAM &amp; FORD, P.A. 2800 Ponce de Leon Blvd. Suite 800 Coral Gables, Florida 33134 Telephone: 305-448-3939 Facsimile: 305-441-1745 Email: <a href="mailto:fhasty@wickersmith.com">fhasty@wickersmith.com</a> <i>Attorneys for Howard K. Crompton and Andrew L. Schmidt</i></p>	<p><b>WILLIAM S. REESE</b> <b>WILLIAM SUMMERS</b> <b>KEVIN D. FRANZ</b> LANE, REESE, SUMMERS, ENNIS &amp; PERDOMO, P.A. 2600 Douglas Road Douglas Centre, Suite 304 Coral Gables, Florida 33134 Telephone: 305-444-4418 Facsimile: 305-444-5504 Email: <a href="mailto:wreese@lanereese.com">wreese@lanereese.com</a> <a href="mailto:kfranz@lanereese.com">kfranz@lanereese.com</a> <a href="mailto:wsummers@lanereese.com">wsummers@lanereese.com</a> <i>Attorneys for Boys Scouts of America and The South Florida Council, Inc.; Boy Scouts of America</i></p> <p><b>GREG M. GAEBE</b> GAEBE, MULLEN, ANTONELLI &amp; DIMATTEO 420 South Dixie Highway, 3<sup>rd</sup> Floor Coral Gables, FL 33146 305-667-0223 305-284-9844 – Fax Email: <a href="mailto:ggaebe@gaebemullen.com">ggaebe@gaebemullen.com</a> <i>Attorneys for Plantation United Methodist Church</i></p>