

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,

vs.

**BOY SCOUTS OF AMERICA; et al**

Defendants.

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**PLAINTIFFS' RESPONSE TO DEFENDANT  
SOUTH FLORIDA COUNCIL'S MOTION FOR PROTECTIVE ORDER (DE #121)**

Plaintiffs, in accordance with the Court's February 2, 2011, Order (DE # 123), respond to Defendant South Florida Council's (SFC) Motion for Protective Order (DE # 121) as follows:

This motion is directed solely to the Notices of Deposition Duces Tecum to individual employees, agents, or representatives of the South Florida Council.<sup>1</sup>

**Item 1, 3 and 6, Schedule A.**

All of requests for materials sought in Schedule A are directed to the individual deponents. Upon information and belief, Jeff Hunt was the Executive Director of SFC during times relevant. John Anthony is the Scout Executive-CEO. Joshua Christ is the Director of Field Services, and Joe Knight is the District Executive for the Pine Island District (which includes Troop 111).

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<sup>1</sup> To the extent that one of the deponents may be produced as the corporate representative of South Florida Council under Fed. R. Civ. P. 30(b)(6), South Florida Council has already made its objections in a separate motion for protective order (DE # 120).

In these notices for deposition duces tecum, the Plaintiffs seek only those documents in the deponent's possession which were sent to Troop 111 either by the SFC or by the deponent himself. Plaintiffs have limited this inquiry to the three years before Michael Sclawy-Adelman's death to the present.

As the Plaintiffs have stated in previous filings with the Court,<sup>2</sup> a crucial issue in this case is the amount of involvement and/or control the South Florida Council exercises, or may have exercised, with respect to the charter organizations, the Scoutmasters and the actual troop level activities. **The South Florida Council contends that it has little, if any involvement or control over what occurs at the Scoutmaster and/or Troop level of the organization and went to great lengths in its Motion to Dismiss Counts VII and VIII (DE 5) to argue that position.**<sup>3</sup>

To the extent that these deponent employees, agents or representatives of the South Florida Council communicated with the scoutmasters and/or the troop, that information is relevant and discoverable. Materials related to scouting or scout activities which they personally sent to the scoutmasters or the troop, or sent in their capacities as employees, representatives or agents of the South Florida Council, are equally relevant.

As the Plaintiffs have argued repeatedly, the issue of control, participation and involvement of the South Florida Council with respect to the scoutmasters and Troop 111 is not limited to hiking, or heat related illness or death stemming from hikes. Likewise, any policies, procedures or guidelines communicated to the scoutmasters or the Troop, or any materials provided to them may

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<sup>2</sup> See Plaintiffs' Motion to Compel Discovery (DE # 129) and Plaintiffs' Response in opposition to Boy Scouts of America's and the South Florida Council's Motion for Protective Order.

<sup>3</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.

be relevant to the overall safety of the boys and the ways, if any, in which the SFC and/or any deponent, was involved in scout safety issues and concerns.

Also of great significance is the **selection, retention and training of scoutmasters**. Upon information and belief, the SFC was directly involved in these areas with respect to scoutmasters with its region. Therefore, any documentation involving the Defendant Scoutmasters which is in the possession, custody or control of the deponents is highly relevant to the claims made in the Amended Complaint against both the individual scoutmasters, and the Boy Scout Defendants. As set forth above, SFC moved to dismiss the Plaintiffs' claims for negligent selection and retention of Crompton and Schmidt. If these deponents have documentation to/from these defendants, of any nature whatsoever, that information is relevant and discoverable based upon the issues presented in this action.

**Items 19 and 25, Schedule A**

These requests are already limited to boy scout hikes. The Plaintiffs have directed these requests to the individual deponents. Plaintiffs have further limited the temporal scope of these requests to five years. To the extent that the deponents have responsive documents or materials in their possession, they should be produced at their depositions.

Limiting the Plaintiffs' inquiries/requests solely to "lawsuits" involving only "heat related illness or death stemming from hikes" would deprive the Plaintiffs of information is reasonably calculated to lead to admissible evidence.

Discovery related to the complaints of other injuries and/or deaths can be relevant to show notice of the risks to scouts, to show the magnitude of the dangers involved, to show the ability to correct, alleviate, or minimize the risks and dangers, the lack of safety, the standard of care and/or causation.. See e.g., *Hessen v. Jaguar Cars, Inc.*, 915 F.2d 641, 650 (11<sup>th</sup> Cir. 1990)(citing *Jones*

*v. Otis Elevator Co.*, 861 F.2d 655, 661 (11<sup>th</sup> Cir. 1988)). Whether such information that is admissible at trial is a question for another day. But the discovery of such information is clearly permissible under the federal rules. See *Pinchinat v. Graco Children's Products, Inc.*, 2005 WL 5960928 \* 2 (M.D. Fla. April 7, 2005).

The Plaintiffs are entitled to know if the South Florida Council, or these deponent received other complaints in the past five years related to hiking, whether or not those complaints resulted in lawsuits, and/or whether they were strictly confined to heat related illness or death. Documents/materials reflecting such complaints, which the deponents have in their possession should be produced.

In addition, the Plaintiffs have alleged that the scoutmaster defendants were negligent in numerous ways related to the May 9, 2009, hike. Therefore, any complaints related to hikes, and any documents related to such complaints, are relevant to these claims and are calculated to lead to the discovery of admissible evidence regarding the competence, or lack thereof, of Crompton and Schmidt.

For all of the foregoing reasons, the Plaintiffs respectfully request that Defendant South Florida Council's motion for protective order be denied.

Respectfully submitted,

/s/ Robert D. Peltz

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 8, 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**

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

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