

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 DEFENDANT
HOWARD CROMPTON**

Plaintiffs, Howard Adelman and Judith Sclawy respectfully move for the entry of an Order compelling discovery from Defendant Howard Crompton and state:

1. Plaintiffs require better answers to their Interrogatories 1, 2, 6; production of documents pursuant to Plaintiffs' Requests for Production 1, 2, 8, 9, 13-15, and Responsive answers to Plaintiffs' Requests for Admissions 9 and 10 which were served upon Defendant Crompton.

2. Due to the significant number of disputed discovery items, the Plaintiffs provide the Defendant's Answers to Interrogatories, Response to Plaintiffs' First Request for Production, and Response to Plaintiffs' First Request for Admissions attached as **Exhibits 1-3**.

3. On January 24, 2011, Plaintiffs' Counsel wrote to Mr. Crompton's counsel regarding the incomplete and/or inadequate discovery responses. See **Exhibits 4-6**, attached. Plaintiffs have received no response to the letters, necessitating this motion to compel the discovery.

Re: Plaintiffs' Interrogatory 1: Plaintiffs have agreed to limit this interrogatory to the cities

where Mr. Crompton has resided over the past ten years, along with approximate dates. Plaintiffs asked that the Defendant supplement his original answer with that limited information. Defendant has failed to provide any residence information, other than Mr. Crompton's present address. Mr. Crompton's former addresses are relevant to a thorough investigation of him, as well as an investigation into any other lawsuits to which he may have been party.

Re: Plaintiffs' Interrogatory 2: Defendant purports to have provided Mr. Crompton's insurance information by letter dated August 20, 2010, to Plaintiffs' former attorney, Mark Sylvester (who is no longer with the Leesfield & Partners law firm). Undersigned counsel has been unable to locate any such letter and specifically asked Defendant's counsel to provide another copy. Nothing provided to the Plaintiffs thus far, has indicated whether Mr. Crompton has homeowner's insurance and/or other insurance coverage except the insurance provided for him by the Boy Scouts of America. In any event, and under all circumstances, the Plaintiffs are entitled to a sworn response from Mr. Crompton as to the insurance information requested in Interrogatory 2.

Re: Plaintiffs' Interrogatory 6: Based on the Defendant's objection to this simple and standard interrogatory, Plaintiffs cannot determine whether the Defendant is aware of additional witnesses who were not identified because of the objection. Defense counsel has failed to respond to Plaintiffs' inquiry as to whether the answer was complete despite the objection, or whether other witnesses were known but not identified. In addition, the Defendant failed to answer the part of the interrogatory concerning witness statements and has not responded to Plaintiffs' follow-up inquiry.

Plaintiffs' Request 1: In lieu of inspection, the Plaintiffs have asked Defendant to provide reproductions of the photographs and other materials sought in request 1. As of this filing, nothing has been provided.

Plaintiffs' Request 8: Plaintiffs appreciate that the Defendant may only have his personal copy of the Scout Master Handbook and the troop's hiking merit badge book in his personal possession. Rule 34 does not limit discovery to only documents and materials in the party's personal possession, but includes those in his custody and/or control. If the Defendant had additional responsive documents and materials which are no longer in his personal possession because he gave them to his legal counsel after this lawsuit was filed, the Plaintiffs wish to inspect all responsive documents/materials. If there are no such documents, Plaintiffs seek a supplemental response that so clarifies the Defendant's original response.

Plaintiffs' Request 13: The Defendant's boilerplate objection of "overly broad, vague and ambiguous" is not a meritorious objection. To sustain such an objection, the Defendant must provide specifics as to how or why the request is overbroad, etc. Clearly the Defendant has not done that. Objections that merely state that a request is overly broad or unduly burdensome (as the Defendants have done) are *meaningless* and are deemed without merit by our courts. *See e.g., Guzman v. Irmadan, Inc.*, 249 F.R.D. 399, 400 (S.D. Fla. 2008). Indeed, federal courts have held that such objections are not proper objections at all. *Id.* at 400-01 (quoting *Josephs v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982)).

It is equally well established that a "party resisting discovery 'must show specifically **how** . . . each interrogatory [our Request for Production] is not relevant or **how** each question is overly broad, burdensome or oppressive . . .'" *Panola Land Buyers Ass'n. v. Shuman*, 762 F.2d 1550, 1559 (11th Cir. 1985)(quoting *Josephs v. Harris Corp.*, 677 F.2d 985 (3d Cir. 1982)(internal citations omitted); *see also Abdin v. American Security Ins. Co.*, 2010 WL 1257702 * 2 (S.D. Fla. March 29, 2010)(meaningless boilerplate objections are inappropriate). In other words, the resisting party must

expressly state how any particular discovery request is “out of bounds.” *Benfatto v. Wachovia Bank, N.A.*, 2008 WL 4938418 *2 (S.D. Fla. Nov. 19, 2008).

If there are other responsive documents/materials, other than the 3 items the Defendant says are available for inspection, the Plaintiffs are entitled to know what they are.

Plaintiffs’ Request 14: Like request 8, this request encompasses documents and materials which may no longer be in the Defendant’s “possession.” If the Defendant had additional responsive documents and materials which are no longer in his personal possession because he gave them to his legal counsel after this lawsuit was filed, the Plaintiffs wish to inspect all responsive documents/materials. If there are no such documents, Plaintiffs seek a supplemental response that so clarifies the Defendant’s original response.

Plaintiffs’ Request 15: Again, the Defendant’s boilerplate objection lacks merit. If there are other responsive documents/materials, other than the three items identified in response to request 13, the Plaintiffs are entitled to know what they are.

Plaintiffs’ Request for Admission 9 and 10: Defendant Crompton’s responses to these requests are not responsive. He has neither admitted nor denied the request. Plaintiffs are entitled to an answer that responds to the request rather than the non-responsive information Mr. Crompton has provided.

WHEREFORE, the Plaintiffs respectfully request an Order granting their motion to compel discovery from Defendant Howard Crompton as set forth herein. Due to the April 8, 2011, discovery deadline in this action, and the deposition of Defendant Crompton which is scheduled for March 8, 2011, Plaintiffs further request that the Court order that all discovery be provided to the Plaintiffs within five working days from the date of the Order. A Proposed Order is attached as **Exhibit 7**.

Respectfully submitted,

/s/ Robert D. Peltz

ROBERT D. PELTZ

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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 three letters to Defendant's counsel on January 24, 2011, requesting that the Defendant voluntarily provide supplemental answers and offering to discuss the issues further. No response was received from Defendant's counsel to the Plaintiffs' reasonable efforts.

/s/ Robert D. Peltz

ROBERT D. PELTZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 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

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

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