

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 ANDREW SCHMIDT**

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

1. Plaintiffs require better answers to their Interrogatories 1, 2, 6, 9, 20, 22, 23 and 27 and production of documents pursuant to Plaintiffs' Requests for Production 2, 9 and 13-15 which were served upon Defendant Schmidt.
2. Due to the significant number of disputed discovery items, the Plaintiffs provide the Defendant's Answers to Interrogatories and Response to Plaintiffs' First Request for Production attached as **Exhibits 1 and 2**.
3. On January 24, 2011, Plaintiffs' Counsel wrote to Mr. Schmidt's counsel regarding the incomplete and/or inadequate discovery responses. See **Exhibits 3 and 4**, 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. Schmidt 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. Schmidt's present address. Mr. Schmidt'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. Schmidt'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. Schmidt 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. Schmidt 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.

Re: Plaintiffs' Interrogatory 9: Plaintiffs contend that it is relevant to know if Defendant Schmidt has been involved in any lawsuits involving personal injury and/or wrongful death. Information contained in such lawsuits is reasonably calculated to lead to the discovery of admissible

evidence. It is not a valid objection to simply state that something may be “a matter of public record,” and is not a valid reason for failing to answer the interrogatory. Moreover, since the Defendant has refused in response to interrogatory number 1 to even identify the other cities that he has resided in, there is no way that the Plaintiffs can even obtain this information from the public records. The Defendant should be required to provide a supplemental answer identifying any lawsuits involving personal injuries or wrongful deaths.

Plaintiffs’ Interrogatory 20: Plaintiffs contend that any grievance or complaint from the parent of guardian of any scout as it relates to scouting activity is relevant to the claims raised in this action, and thus, discoverable. Since the Defendant has admitted that grievances and/or complaints have been made against him, the Defendant should be compelled to provide a complete answer to this interrogatory providing all of the information requested.

Plaintiffs’ Interrogatory 22: Among the specific items identified in Defendant’s response to this interrogatory, he also referred to “the Florida trail information.” Defendant has refused to clarify that response to identify what “Florida trail information” he is referring to. Plaintiffs are entitled to know what the Defendant means by this response and would ask that he be compelled to provide a complete answer to this interrogatory.

Plaintiffs’ Interrogatory 23: The Defendant’s answer to this interrogatory is simply not responsive to the question. Plaintiffs request that the Court compel the Defendant to provide a “responsive” answer to this interrogatory, providing the information sought.

Plaintiffs’ Interrogatory 27: Plaintiffs did not receive any answer to this interrogatory, other than the objections. Plaintiffs later agreed to narrow the scope of this interrogatory to eliminate the Defendant’s rates of pay. Still, the Plaintiffs have never received an answer to this interrogatory.

The information sought is clearly relevant to the Defendant's background, training and experience. Plaintiffs ask the Court to compel a complete answer to interrogatory 27.

Plaintiffs' Document Request 2: Despite responding to this request stating that the documents would be provided at a later date, the Plaintiffs have never received any insurance documents/materials from Defendant Schmidt, other than insurance information provided by the Boy Scouts of America.

Plaintiffs' Document Request 9: Plaintiffs appreciate that the Defendant may not have responsive documents/materials 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 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' Document 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 items the Defendant identified in his answer to interrogatory 8 and which he says are available for inspection , the Plaintiffs are entitled to know what they are.

Plaintiffs’ Request 14: Plaintiffs cannot decipher the Defendant’s response to this request. The Plaintiffs did not ask for any “list of materials.” Plaintiffs ask that the Court compel the Defendant to provide a better response to this request and to produce any documents or other materials that are responsive to the request.

Plaintiffs’ Request 15: Again, the Defendant’s boilerplate objection lacks merit. If there are other responsive documents/materials, other than the 3 items identified in response to request 13, the Plaintiffs are entitled to know what they are.

WHEREFORE, the Plaintiffs respectfully request an Order granting their motion to compel discovery from Defendant Howard Schmidt as set forth herein. Due to the April 8, 2011, discovery deadline in this action, and the deposition of Defendant Schmidt which is scheduled for March 7, 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 5**.

Respectfully submitted,

/s/ 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 two letters to Defendant's counsel on January 24, 2011, requesting that the Defendant voluntarily provide supplemental answers/documents 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

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

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