

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-CV-22236-ASG
Magistrate Judge: Magistrate Judge Chris M. McAliley

HOWARD ADELMAN and JUDITH SCLAWY-
ADELMAN, as Co-Personal Representative of the
Estate of MICHAEL SCLAWY-ADELMAN,

Plaintiffs,

v.

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

Defendants.

**DEFENDANTS, HOWARD K. CROMPTON AND ANDREW L. SCHMIDT'S
FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND DEMAND FOR
JURY TRIAL TO PLAINTIFFS' AMENDED COMPLAINT**

Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, by and
through the undersigned counsel, and in accordance with the applicable Fed. R. Civ. P.,
hereby file this First Amended Answer, Affirmative Defenses and Demand for Jury Trial,
to Plaintiffs' Amended Complaint, as follows:

1. Admitted.
2. Admitted.
3. Admitted that MICHAEL SCLAWY-ADELMAN participated in a hike in
the Florida Trail in the Big Cypress National Park, otherwise denied.
4. Admitted.

5. Admitted.
6. Denied.
7. Denied.
8. Admitted. Michael became dizzy but Denied he was delirious.
9. Denied.
10. Defendants Deny that Andy and the other two Scouts went in search for water. It is Admitted at the end of the trail water was offered to the Scouts. Otherwise Denied.
11. Defendants are without knowledge to Admit or Deny so therefore, Denied.
12. Defendants are without knowledge to Admit or Deny so therefore, Denied.
13. Admitted.
14. Defendants are without knowledge to Admit or Deny so therefore, Denied.
15. Defendants are without knowledge to Admit or Deny so therefore, Denied.
16. Defendants are without knowledge to Admit or Deny so therefore, Denied.
17. Defendants are without knowledge to Admit or Deny so therefore, Denied.
18. Defendants are without knowledge to Admit or Deny so therefore, Denied.
19. Admitted.
20. Defendants are without knowledge to Admit or Deny so therefore, Denied.
21. Defendants are without knowledge to Admit or Deny so therefore, Denied.
22. Defendants are without knowledge to Admit or Deny so therefore, Denied.
23. Defendants are without knowledge to Admit or Deny so therefore, Denied.
24. Defendants are without knowledge to Admit or Deny so therefore, Denied.

25. Defendants are without knowledge to Admit or Deny so therefore, Denied.
26. Defendants are without knowledge to Admit or Deny so therefore, Denied.
27. Defendants are without knowledge to Admit or Deny so therefore, Denied.
28. Admitted.
29. Admitted.
30. Defendants are without knowledge to Admit or Deny so therefore, Denied.
31. Admitted.
32. Denied.
33. Defendants are without knowledge to Admit or Deny so therefore, Denied.
34. Admitted that this Court has subject-matter jurisdiction.

Paragraphs 35 through 44 (Count I) are Denied and strict proof thereof is demanded.

Paragraphs 45 through 52 (Count II) are Denied and strict proof thereof is demanded.

Paragraphs 53 through 62 (Count III) are Denied and strict proof thereof is demanded.

Paragraphs 63 through 70 (Count IV) are Denied and strict proof thereof is demanded.

Paragraphs 71 through 94 (Count V) are not directed to these Defendants and therefore are Denied.

Paragraphs 95 through 111 (Count VI) are not directed to these Defendants and therefore are Denied.

Paragraphs 112 through 133 (Count VII) are not directed to these Defendants and therefore are Denied.

Paragraphs 134 through 139 (Count VIII) are not directed to these Defendants and therefore are Denied.

Paragraphs 140 through 151 (Count IX) are not directed to these Defendants and therefore are Denied.

Paragraphs 152 through 173 (Count X) are not directed to these Defendants and therefore are Denied.

Paragraphs 174 through 179 (Count XI) are not directed to these Defendants and therefore are Denied.

Paragraphs 180 through 191 (Count XII) are not directed to these Defendants and therefore are Denied.

Paragraphs 192 through 204 (Count XIII) are not directed to these Defendants and therefore are Denied.

DEMAND FOR JURY TRIAL

These Defendants demand trial by jury.

FIRST AFFIRMATIVE DEFENSE

The Decedent and/or Plaintiffs conducted themselves in a negligent manner and as a direct and proximate result of their negligence, they caused or contributed to cause the incident and injuries complained of by Plaintiffs in this action. Therefore, the Plaintiffs are barred from recovery in whole or in part against these Defendants on the basis of comparative negligence.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' damages herein were partially or totally caused by non-parties or persons over whom these Defendants had no dominion or control and, therefore, Defendants seek entitlement to the defenses and privileges set forth in Section 768.81(3) Florida Statutes, with respect to apportionment of fault principles. Any judgment against these Defendants should be reduced by the apportionment of fault allocated on the verdict form at the time of trial to designated *Fabre* defendants and/or co-defendants in this action. Specifically, Defendants affirmatively aver that any alleged damages were the result of negligence on the part of the U.S. Department of the Interior National Park Service which was not under the care, custody or control of Defendants; and therefore, the Plaintiffs are unable to recover in whole or in part as against this Defendant. See Fabre v. Marin, 623 So.2d 1182 (Fla. 1993). Pursuant to Nash v. Wells Fargo Guard Service, Inc., 678 So.2d 1262 (Fla. 1996), this Defendant may seek amendment to identify other such non-parties or persons as they become known and with due notice to Plaintiff.

These Defendants specifically allege that the U.S. Department of the Interior (hereinafter referred to "National Park Services") was negligent in the following manner which caused or contributed to cause the death of Michael Adelman:

- The National Park Service failed to notify the scout troop of elevated temperatures and humidity in the Park;

- The National Park Service failed to check on the status of the scout troop despite the National Park Service's knowledge of potentially dangerous temperatures and humidity;
- The National Park Service failed to take measures to alert the troop and the scout masters of dangerous temperatures and humidity despite knowledge the troop was hiking in the Park under these conditions;
- The National Park Service failed to timely respond to the emergency 911 notification. In fact, it took at least 45 minutes to get to the site, and when the National Park Service arrived they could not access the area where Michael Adelman was located to provide treatment.
- The National Park Service failed to send any ATV's out and instead responded in helicopters that ultimately could not land on the terrain.
- In addition, there was inadequate emergency response by the U.S. National Park Service to a life or death emergency in a U.S. park
- The National Park Service tampered with our GPS device and removed valuable data from the GPS device when they downloaded information from it. This was an unauthorized destruction and spoliation of evidence.

These Defendants allege that the above acts or omissions by the Park Service were the proximate cause of Michael Adelman's death and intend to place the National Park Service on the verdict form at the time of trial.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs expressly and/or impliedly consented to all, or part of actions which Plaintiffs alleges were the cause of any and/or all of their alleged damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against HOWARD K. CROMPTON, and ANDREW L. SCHMIDT, are barred, in whole or in part, by the doctrine of waiver, pursuant to the terms and conditions of the "PARENT PERMISSION FORM" executed by Michael Sclawy-Adelman's parent/guardian on August 20, 2008.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims against, HOWARD K. CROMPTON, and ANDREW L. SCHMIDT, are barred, in whole or in part, by the doctrine of release, pursuant to the terms and conditions of the "PARENT PERMISSION FORM" executed by Michael Sclawy-Adelman's parent/guardian on August 20, 2008.

I HEREBY CERTIFY that on March 16, 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 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.

WICKER, SMITH, O'HARA, MCCOY &
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