

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

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 ANDY L. SCHMIDT'S,
MOTION TO COMPEL PRODUCTION OF MICHAEL SCLAWY-ADELMAN'S
TEXT MESSAGES**

The Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, by
and through the undersigned counsel, and in accordance with the Federal Rules of Civil
Procedure, hereby file this Motion to Compel Production of Michael Sclawy-Adelman's
Text Messages, as follows:

1. On January 28, 2011, this Court entered an Order directing the extraction
of data on Michael Sclawy-Adelman's cellular telephone from May 8, 2009 and May 9,
2009, and the subsequent production of a written report identifying all of the data. [DE
118; p.2 of 4].

2. Carter Conrad, Jr., is the individual who performed the extraction. He authored a report on March 3, 2011, which is attached hereto as Exhibit "A".

3. The report identifies 188 SMS History Items. (Exhibit A, page 1). According to Mr. Conrad, these are text messages sent and received by Michael Adelman.

4. The report states "[e]xaminer saved all SMS files and Phonebook Contacts as Excel spreadsheets (.xlsx), as described above, however, the SMS and Contacts have no dates associated with the files. Examiner removed all text message content from SMS spreadsheet in order to provide confidentiality to sender/recipient, but to comply with Court Order." (See Exhibit "A", page 3). Mr. Conrad was not authorized to remove any messages. This was done either by Mr. Conrad or by urging of Plaintiffs' counsel.

5. Mr. Conrad reported on the 188 text messages he found on Michael Sclawy-Adelman's cellular telephone, but left out the content of the messages he found. There are messages which could easily relate to or be about the hike, Michael becoming an Eagle Scout, his interests and/or any lack of interest in going on this hike. Both parents have been deposed. Both parents have admitted that Michael expressed a wish to stay home and not go on the hike. Kris Leon has testified Michael and his mom were arguing in loud voices when Michael was dropped off the morning of the hike.

6. Mr. Conrad stated in his report that he could not determine the "dates" that each of the SMS History Items were sent or received. However, it is clear from Mr. Conrad's report that all 188 text messages were on Michael Sclawy-Adelman's phone on

May 8, 2009 and May 9, 2009. Regardless of the dates they were sent or received, Michael Sclawy-Adelman had kept them on his phone.

7. Also contained on the phone is Michael Sclawy-Adelman's phone book, which – unlike the text messages – was produced in full in Mr. Carter's report. (Exhibit "A", page 6-8). Mr. Conrad disclosed the names of the individuals who correspond to the phone numbers. Mr. Conrad likely reasoned that regardless of when each name and number was entered or placed in the phone book, Michael Sclawy-Adelman had kept them on his phone and had access to them on May 8, 2009 and May 9, 2009.

8. The Court's Order is clear that all data from May 8, 2009 and May 9, 2009 should have been included in Mr. Conrad's report. Withholding the text message content which constituted data on the cellular telephone on May 8, 2009 and May 9, 2009, did not comply with this Court's Order.

9. The only source of this information about Michael's state of mind, his preparation or lack of preparation for this hike is contained in the text messages. The defense needs this information which is relevant and material.

WHEREFORE, the Defendants, Howard K. Crompton and Andrew L. Schmidt, respectfully request that this Honorable Court enter an Order compelling the production of the SMS files and History Items which were withheld by Mr. Conrad in his March 2, 2011 report, and, for any other relief this Honorable Court deems just and proper.

I HEREBY CERTIFY that on March 28, 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.

WICKER, SMITH, O'HARA, MCCOY &
FORD, P.A.

Attorney for Howard K. Crompton and
Andrew L. Schmidt

2800 Ponce de Leon Boulevard

Suite 800

Coral Gables, FL 33134

Phone: (305) 448-3939

Fax: (305) 441-1745

By: /s/Frederick E. Hasty, III

Frederick E. Hasty III

Florida Bar No. 260606

fhasty@wickersmith.com

Service List

Ira H. Leesfield, Esquire
Leesfield & Partners, P.A.
2350 South Dixie Highway
Miami, FL 33133

Robert D. Peltz, Esquire
Leesfield & Partners, P.A.
2350 South Dixie Highway
Miami, FL 33133

William S. Reese, Esquire
Lane, Reese, Summers, Ennis & Perdomo
Douglas Centre, Suite 304
2600 Douglas Road
Coral Gables, FL 33134

Greg M. Gaebe, Esquire
Gaebe, Mullen, Antonelli, Esco & DiMatteo
420 South Dixie Highway, 3rd Floor
Coral Gables, FL 33146