

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

Defendants.

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**PLAINTIFFS' RESPONSE TO CROMPTON'S AND SCHMIDT'S MOTION TO  
COMPEL PRODUCTION OF MICHAEL SCLAWY-ADELMAN'S TEXT MESSAGES**

COME NOW, the Plaintiffs, HOWARD ADELMAN AND JUDITH SCLAWY as Co-Personal Representatives of the ESTATE OF MICHAEL SCLAWY-ADELMAN, and file their Response to Defendant Crompton's and Schmidt's Motion to Compel Production of Michael Sclawy-Adelman's Text Messages [D.E. 177] and would respectfully show the Court as follows:

1. On January 28, 2011, this Court entered an order directing the Plaintiff to produce the decedent's cell phone to an expert selected pursuant to the protocol established by the Court for the purposes of "retrieve[ing] any data from May 8, 2009 and May 9, 2009 and [to] produce a report that identifies all data for those two days found on the telephone. . ." [D.E. 118].

2. Pursuant to the Court's order, the Plaintiff transmitted the cell phone to Carter Conrad, Jr., the expert selected to perform the analysis. Thereafter, Mr. Conrad prepared his report which was attached to the Defendants' motion as part of Composite Exhibit A.

3. As reflected in Mr. Conrad's report, he was able to download and report on the data regarding the receipt and sending of phone calls on the dates set forth in the order. Nevertheless, he further determined by his inspection that none of the text messages had a date associated with them on the phone and accordingly, it was impossible to determine whether any of these text messages ("SMS files") had been sent or received on May 8 or 9, 2009, the two days expressly limited by the Court in its order. Specifically, Mr. Conrad noted:

Examiner removed all data items, with dates non-responsive to May 8-9, 2009 time frame, as per Court Order, and saved resulting files as Excel spreadsheets (.xlsx). Examiner saved all SMS files and Phone Book Contacts as Excel spreadsheets (.xlsx) as described above, however, the SMS and Contacts have no dates associated with the file. 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" to Defendants' Motion [D.E. 177-1, p.6].

4. Accordingly, the 188 text messages contained on Michael's phone date back to the time that it was purchased on July 3, 2007.

5. At the hearing on the Defendants' motion directed to the inspection of Michael's cell phone, counsel for Crompton and Schmidt requested that the Court permit the examination and analysis of the cell phone for an extensive period of time. The Plaintiff objected to this request on a variety of grounds, including that it was not reasonably calculated to lead to the discovery of

admissible evidence and constituted an invasion of privacy of Michael as well as his family and friends. The Court agreed and narrowed the inspection to the two day period of May 8 and 9, 2009.

6. The Court's ruling limiting the inspection to the two day period was consistent with its rulings regarding the phone records of other parties, including the Boy Scouts of America and South Florida Council. See Order Following Discovery Conference, ¶1 F dated February 17, 2011 [D.E. 153].

7. Mr. Conrad has complied with the Court's order by providing the information concerning phone calls which were made and/or received on May 8 and 9, 2009. Mr. Conrad further complied with the Court's order by also identifying the numbers from which all of the text messages were sent or received, but without setting forth the contents of the messages, since it was impossible to determine whether any of them had been received or transmitted on the two days limited by the Court's order. His report also contained an identification of all phone numbers saved to the cell phone, so that it is possible to match up the individual who sent or received each text message. It is therefore obvious when doing so that these text messages were sent or received by friends of Michael's and there is no showing that any of them have anything whatsoever to do with the Boy Scouts, hiking or any other potential issue in this case.

8. The Plaintiff finds it extremely incongruous that the Defendants Crompton and Schmidt seek to invade the privacy of Michael, his family and friends requesting the production of all of these text messages over an unlimited time period dating back to the purchase of the phone in 2007 without any showing of the relevancy of these text messages to any issue in this case, when these very same Defendants have objected to even identifying the members of the Troop to which

Mr. Schmidt sent an email regarding one of the Troops hikes just three weeks prior to the subject hike on "privacy grounds." Despite the obvious relevancy of an email to Troop members relating to a hike just three weeks before the one on which Michael died, Mr. Schmidt's counsel objected

. . . on the grounds that the Interrogatory seeks for Defendant Schmidt to breach the confidentiality of the recipients by disclosing the information requested. The recipients of this e-mail have not authorized such a disclosure to the Defendant nor is the Defendant going to breach the privacy rights of the recipients of the e-mail. Such persons are not litigants to this litigation. Objection is made on the grounds of privacy, confidentiality, being over broad, not calculated to lead to admissible discovery, burdensome and oppressive to families and/or minors who are scouts.

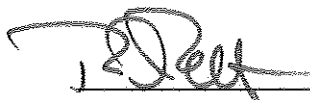
See Exhibit "1" attached hereto.

9. Since there is absolutely no showing of any relevancy to any of the text messages between Michael and his friends dating back to the date that he first purchased the phone in 2007, the Defendants' request should be denied outright. At most, if the Court should find any conceivable possibility or shred of relevancy, Mr. Carter could be further instructed to review the text messages and provide copies of any that deal specifically with the Boy Scout of America hike on May 9, 2009 at the Big Cypress Preserve. Any further disclosure would clearly constitute an invasion of privacy for Michael, his family and friends and have absolutely no relevancy whatsoever.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 1, 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.



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**SERVICE LIST**

**HOWARD ADELMAN AND JUDITH SCLAWY-ADELMAN  
VS.**

**BOY SCOUTS OF AMERICA, et al  
CASE NO.: 10-CV-22236-ASG**

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

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