

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Miami Division

Howard Adelman and Judith Sclawy,
as Co-Personal Representatives of
The Estate of Michael Sclawy-Adelman,

Plaintiffs,

CASE NO. 1:10-cv-22236-ASG

District Ct. Judge: Alan S. Gold

vs.

Boy Scouts of America, a Foreign Corporation; Magistrate Judge: Jonathan Goodman
The South Florida Council Inc.,
Boy Scouts of America;
Plantation United Methodist Church;
Howard K. Crompton, individually; and
Andrew L. Schmidt, individually,

Defendants.

JOINT MOTION TO EXTEND PRETRIAL AND TRIAL DEADLINES

COMES NOW, all parties, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 6(b); 16(b)(4); 29(b) jointly move to extend all deadlines as listed in the Order Setting Pretrial and Trial Dates 60 days, and the parties state more fully as follows:

1. This is a wrongful death action stemming from an incident that occurred on May 9, 2009, when Michael Sclawy-Adelman died while taking part in a hike in the Big Cypress National Park of the Florida Everglades.
2. On August 30, 2010, this Court issued an "Order Setting Pretrial and Trial Dates, Referring Discovery Motions, Directing Parties to Mediation, and Establishing Pretrial Dates and Procedures." See Order attached as *Exhibit "A."* [D.E. 39].
3. The parties jointly moved for and were granted an extension of time of the non-expert discovery cutoff through June 15, 2011. [D.E. 181, 184].
4. Moreover, the parties informally agreed to extend the deadlines for identifying expert witnesses and submitting reports 10 days.

5. Based on the discovery intensive nature of this complex case, and the many issues not yet resolved, the parties agree that there exists good cause for an extension of all pretrial and trial deadlines. Thus, the parties respectfully request that all deadlines be extended 60 days.

Written Discovery and Deposition Testimony

6. The parties have diligently been working to conduct discovery in this case. Considerable written discovery has been propounded and responded to, and over 25 depositions have taken place already, with many still scheduled for the immediate future.
7. Based on this ongoing, intensive discovery, new fact witnesses whose testimony is critical to the issues in this case have been uncovered. Many of those are now set for deposition including the following:
 - a. Wendy King
 - b. Philip King
 - c. Dr. Kenneth Taylor
 - d. Linda Vedsted
 - e. Sam Kent
 - f. Sherrill Lowrey
 - g. Elizabeth Adelman
 - h. Dr. Jeffrey Fleigenspan
8. All parties believe that additional depositions of fact witnesses not yet noticed may still need to take place. Moreover, the following outstanding discovery may necessitate further fact witness depositions and unanticipated expert witness retention.

Touhy Appeals

9. There are several additional depositions that are anticipated but not yet scheduled including depositions of some Park Rangers from the U.S Park Service/Department of the Interior who were present during the incident on May 9, 2009 and shortly thereafter contributed to written incident reports. The Plaintiffs have issued several Touhy requests to the Department of the Interior requesting the depositions of these Rangers pursuant to 43 C.F.R. §2.80 *et seq.* The

Plaintiffs have notified this Court throughout litigation of the attempts to secure the Rangers' testimony. *See* [D.E. 143, 146, 167]. All requests have been denied. Plaintiffs filed an appeal of the Touhy denials, which describes in detail the reasons for seeking their testimony. [D.E. 217, *see also* D.E. 55 and exhibits thereto filed as D.E. 58]. Judge Goodman has given the United States Attorney's Office until June 22, 2011 to file a written response. [D.E. 218]. Therefore, it may be some time before the Touhy issue is resolved. If the denials are overruled, several Park Rangers will have to sit for deposition, which will likely not occur until at least July of 2011.

10. Plaintiffs' also issued a similar Touhy request with the Center for Disease Control ("CDC"). The CDC issued a report following a Boy Scouts of America event in 2005, which Plaintiffs' assert is relevant to the incident at issue. Plaintiffs have expressed their intention to appeal the Touhy request denial by the CDC, which will also take time to resolve.

Testing of Michal Sclawy-Adelman's Blood

11. The day after the incident, blood from Michael was drawn by Dr. Manfred Borges, the Deputy Chief Medical Examiner for the District 20 Medical Examiner's Office.
12. The blood sample was then sent to the Miami Dade County Medical Examiner Department where it was tested by Dr. William Hearn.
13. Dr. Hearn testified that Michael's blood contained some concentration of phenylpropanolamine and pseudoephedrine, but he could not determine the quantity.
14. An issue in this case surrounds the medication Michael was taking prior to and during the hike. Defendants assert that such medication – and the chemical impact it had on his body – contributed to or caused his death.
15. The parties agreed to have the blood tested with NMS Labs in Pennsylvania. All necessary paper work according to NMS Labs was filled out and provided to the proper entities along with a check to NMS Labs for the ephedrine testing.

16. However, the Miami Dade Medical Examiner Department indicated this week that further paperwork was necessary. Specifically, it requires an Authorization from Michael Sclawy-Adelman's parents for the release of his blood. The parties have reached an agreement that such authorizations will be provided and are awaiting receipt of the necessary authorizations from the ME's Department.

Michael Sclawy-Adelman's Text Messages

17. This week, Judge Goodman ordered Carter Conrad, Jr., to release to the parties the 188 text messages that were found on Michael Sclawy-Adelman's cell phone [D.E. 222].

18. Judge Goodman's Order, however, permits the Plaintiffs to move for "some additional type of special protection" by "seeking the relief they deem appropriate." [D.E. 222]. Plaintiffs have moved for a modification of Judge Goodman's ruling. The Defendants have filed a response to Plaintiffs' motion and this issue is now pending before the Magistrate Judge for determination.

19. Regardless, the discovery of who sent the text messages and the content therein may spawn additional discovery.

20. All parties assert that there is good cause for extending the pretrial and trial deadlines due to the ongoing and expanding nature of discovery in this complex wrongful death action.

WHEREFORE, PLAINTIFFS AND DEFENDANTS jointly respectfully request that this Honorable Court extend all pretrial and trial deadlines (including the trial date) 60 days and enter such other relief as this Court deems necessary and just.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was sent June 14, 2011 to: Robert D. Peltz, Esq, Ira H. Leesfield, Esq., LEESFIELD & PARTNERS, P.A., 2350 South Dixie Highway, Miami, FL, 33133; Frederick E. Hasty, Esquire, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A., 2800 Ponce de Leon Boulevard, Suite 800, Coral Gables, FL 33134; Greg Gaebe, Esq., Devang Desai, Esq., Gaebe, Mullen Antonelli, Esco & DiMatteo, 420 S. Dixie Highway, Third Floor, Coral Gables, FL, 33146; Ubaldo J. Perez, Jr., Esq., LAW OFFICES OF UBALDO J. PEREZ, JR., P.A., 8181 NW 154th Street, Suite 210, Miami Lakes, FL 33016.

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