

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

CASE NO. 10-22236-CIV-GOLD/GOODMAN

HOWARD ADELMAN and
JUDITY SCLAWY, as
Co-Personal Representatives of THE
ESTATE OF MICHAEL SCLAWY-ADELMEN,

Plaintiffs,

vs.

BOY SCOUTS OF AMERICA, et al

Defendants.

ORDER ON PLAINTIFFS' RENEWED MOTION FOR REHEARING

This Cause is before the Court in connection with Plaintiffs' Renewed Motion for Rehearing or Modification (DE# 227). This motion is the latest in a series of motions concerning text messages located on Michael Adelman's cellular telephone. The Court has considered the motion and the Defendants' response.

For the reasons outlined below, the motion is **GRANTED** and this Court's earlier Order (DE# 222) is modified to limit the text messages which will be produced by the telephone expert who downloaded the 188 text messages from the decedent's cellphone.

Given the parties' considerable interest in the text messages (as evidenced by the motions, memoranda, motions for rehearing and for reconsideration), the Court again today reviewed the substance of each and every text message which the telephone expert filed under seal. My additional review confirmed the conclusion I reached the first time I reviewed the text messages: the substance of the text messages is not relevant and is not discoverable.

The contents of the text messages do not relate to the factual issues identified by Defendants as potential factual issues or as relevant to possible defenses.

They do not, for example, demonstrate or suggest that Michael Adelman was reluctant to go on the hike. They do not state or imply that Michael Adelman was

complaining about any physical distress before or during the hike. They do not relate to Michel Adelman's preparation or lack of preparation for the hike and they do not discuss his plans to hydrate himself (or not to hydrate himself) before the hike.

Likewise, they do not reveal his state of mind about the hike immediately before or during the hike. They do not in any way reveal that Michael was cajoled, pressured, coerced, convinced or tricked into going on the hike. They do not in any way suggest that Michael's parents (or anyone else, for that matter) insisted that he go on the hike, nor do they suggest or imply that Michael had a disagreement with his parents about going on the hike. They do not mention his physical abilities to handle the hike and they do not discuss any questions which his parents or friends had about his conditioning.

Instead, the text messages are merely the type of messages one would ordinarily expect to find on a 17-year-old high school student's cellphone. They concern the prom, classes, textbooks, girls, dating and similar subjects. Simply stated, and as demonstrated during my first review of these emails, the text messages themselves do not relate to the claims or defenses which the parties have asserted in the case.

Nevertheless, as explained in the Court's earlier Order (DE# 222), the *identities* of those persons who sent text messages to Michael on May 8-9, 2009 are relevant for discovery purposes.

The parties have advised the Court that two text messages were sent to Michael Adelman on the day of the hike (May 9, 2009). Based on the comments about technical limitations of message retrieval at the hearing, the Court was led to believe that the only way for Mr. Conrad to release these two text messages would be to release *all* 188 of them. Therefore, the Court directed Mr. Conrad to produce the information concerning all 188 text messages as the only viable way to produce the information about the two relevant text messages sent during the hike.

However, in their motion for rehearing, Plaintiffs have explained that Mr. Conrad can produce the information about the two text messages by producing the text messages originating from the senders of the two text messages in question. Under this modified approach, Mr. Conrad would produce the information for only six (6) text messages, not all 188. According to Plaintiffs' motion and accompanying exhibits, Mr. Conrad will be able to narrow the production by using T-Mobile phone records (which identify the

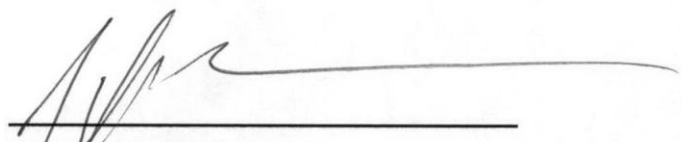
phone numbers of the phones from which the two text messages were sent: 954-529-2696 and 954-554-4668). Basically, these phone records enable Mr. Conrad to narrow the potential universe of text messages necessary to insure production of information about the two text messages from 188 to 6.

Mr. Conrad is ordered to turn over to the parties the SMS files and History for the six text messages originating from the two telephone numbers listed above (and which were withheld from his earlier report) by **June 22, 2011 at 12:00 p.m.**

The Court also fully expects that defense counsel will exercise care and discretion with the information once produced. Defense counsel expressly and unequivocally represented to the Court that he and his clients would treat the information with appropriate confidentiality and discretion. Defendants and their counsel shall not use the text message information for any purpose other than this case.

If Plaintiffs believe that Defendants or their counsel have misused the information from the six text messages which Mr. Conrad will produce, then they may seek immediate relief from this Court. But given defense counsel's commitment to use care and discretion, the Court would be surprised if this type of concern ripened into an actual issue.

DONE AND ORDERED in Chambers, at Miami, Florida, this 15th day of June, 2011.



Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Hon. Alan S. Gold
Counsel of Record