

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-CV-22236-ASG/GOODMAN

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.

**PLAINTIFFS' MOTION FOR ENTRY OF ORDER ON
PLAINTIFFS' MOTION FOR JUDICIAL REVIEW OF DENIAL *TOUHY* REQUEST**

COME NOW the PLAINTIFFS, HOWARD ADELMAN AND JUDITH SCLAWY as Co-Personal Representatives of the ESTATE OF MICHAEL SCLAWY-ADELMAN, by and through their undersigned counsel and hereby move this Honorable Court for the entry of the Order attached as Exhibit "1" on Plaintiffs' Motion for Judicial Review of Denial of *Touhy* request and would respectfully show the Court as follows:

Pursuant to the provisions of 43 C.F.R. §2.80 et seq, the Plaintiffs' made an initial formal "*Touhy* request" on February 7, 2011 upon the Department of Interior [hereinafter "DOI"] and National Park Service [hereinafter "NPS"] to depose various Park Rangers, who were involved in the investigation into Michael Adelman's death. [D.E. 217-8]. This formal request identified specific Park Rangers and the testimony sought from them.

Subsequently, the DOI denied the Plaintiffs' *Touhy* request [D.E. 217-9]. Thereafter, the Plaintiffs' engaged in numerous discussions with counsel for the DOI in an effort to reach an

agreement concerning the scope of depositions of their employees. As part of this ongoing process, which extended over many months, the Plaintiffs also filed a series of supplemental formal *Touhy* requests specifically defining the scope of the proposed inquiry. [D.E. 217-10, D.E. 217-11 and D.E. 217-16].

After these discussions broke down, the Plaintiff filed their Motion for Judicial Review of the Denial of Their *Touhy* Requests on June 2, 2011. [D.E. 217]. In response, this Honorable Court issued its order on the same date [D.E. 218], providing in part:

Although the motion and exhibits demonstrate that Plaintiffs' counsel and the DOI have had numerous communications about the so-called *Touhy* regulations, and their application to this case, the Court is requiring counsel for Plaintiffs and DOI to again confer in an attempt to avoid significant additional motion practice. Although the motion seeks relief against the DOI, the Defendants may also submit a response (either in support of or in opposition to) the motion.

As a result of the continuing negotiations between Plaintiffs' counsel and the U.S. Attorneys Office, which had appeared on behalf of the DOI, a tentative agreement was reached to produce 4 witnesses for deposition regarding the areas covered by Plaintiffs' *Touhy* requests. Counsel for the Defendants were advised of this tentative agreement by correspondence attached hereto as Exhibit "2." At that time, counsel for the Plaintiffs further requested that defense counsel provide dates that they were available for these depositions.

Subsequently, counsel for the Plaintiff and the DOI reached an agreement on the final wording for the order on August 1, 2011, which was thereafter sent to counsel for the Defendants on that date. See Exhibit "3." It was further indicated that pursuant to this Court's prior order, that the Plaintiffs and DOI intended to submit the order on the following day, however, wanted to provide counsel for the parties with the opportunity to assert any comments.

Subsequently, undersigned counsel received an objection from counsel representing two of the Defendants regarding the concern that the order might impact upon recent pending requests made by said Defendants for information, documents and testimony directed to the National Park Service and DOI. Following discussions with defense counsel, these concerns were addressed by the

addition of paragraph 5 to the proposed order with the agreement of counsel for the DOI. No other objections have been transmitted to Plaintiffs' counsel.

The proposed order submitted by the Plaintiffs does not prejudice any of the Defendants from pursuing their own requests and merely acts to resolve the *Touhy* request filed by the Plaintiffs. There is also nothing in the order which prevents the Defendants from attending the depositions and participating fully within the scope of the testimony reached to by the DOI.

WHEREFORE, the Plaintiffs' move this Honorable Court for the entry of the order attached hereto.

Dated: August 2, 2011.

Respectfully submitted,

/s/ Robert D. Peltz

ROBERT D. PELTZ (Fla. Bar No. 220418)

E-mail: peltz@leesfield.com

LEESFIELD & PARTNERS, P.A.

2350 S. Dixie Highway

Miami, Florida 33133

Telephone: (305) 854-4900

Facsimile: (305) 854-8266

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **August 2, 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 or pro se parties 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.

/s/ Robert D. Peltz

ROBERT D. PELTZ

SERVICE LIST

**IRA H. LEESFIELD
ROBERT D. PELTZ**

E-mail: leesfield@leesfield.com
peltz@leesfield.com

LEESFIELD & PARTNERS, P.A.
2350 S. Dixie Highway
Miami, Florida 33133
Telephone: 305-854-4900
Facsimile: 305-854-8266
Attorneys for the Plaintiffs

FREDERICK E. HASTY, III

Email: fhasty@wickersmith.com

WICKER, SMITH, O'HARA, MCCOY, GRAHAM
& FORD, P.A.
2800 Ponce de Leon Blvd.
Suite 800
Coral Gables, Florida 33134
Telephone: 305-448-3939
Facsimile: 305-441-1745

*Attorneys for Howard K. Crompton and
Andrew L. Schmidt*

UBALDO J. PEREZ, JR., ESQ.

Email: uperez@uperezlaw.com
Law Office of Ubaldo J. Perez, Jr., P.A.
8181 NW 154th Street, Suite 210
Miami Lakes, FL 33016
Telephone: (305) 722-8954
Facsimile: (305) 722-8956
Co-Counsel for Howard K. Crompton

**WILLIAM S. REESE
WILLIAM SUMMERS
KEVIN D. FRANZ**

Email: wreesee@lanereese.com
kfranz@lanereese.com
wsummers@lanereese.com

LANE, REESE, SUMMERS, ENNIS &
PERDOMO, P.A.
2600 Douglas Road
Douglas Centre, Suite 304
Coral Gables, Florida 33134
Telephone: 305-444-4418
Facsimile: 305-444-5504
*Attorneys for Boys Scouts of America and
The South Florida Council, Inc.; Boy Scouts
of America*

GREG M. GAEBE

Email: ggaebe@gaebemullen.com
GAEBE, MULLEN, ANTONELLI & DIMATTEO
420 South Dixie Highway, 3rd Floor
Coral Gables, FL 33146
305-667-0223
305-284-9844 – Fax
*Attorneys for Plantation United Methodist
Church*

AMANDA A. KESSLER

Email: Amanda.A.Kessler@usdoj.gov
Assistant United States Attorney
Court Assigned No: A5501293
99 N.E. 4th Street, Suite 326
Miami, Florida 33132
Tel: (305) 961-9128
Fax: (305) 530-7139
Counsel for United States of America