

66450-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISIONCASE NO. 10-CV-22236-ASG
Magistrate Judge: Magistrate Judge Chris M. McAileyHOWARD ADELMAN and JUDITH SCLAWY-
ADELMAN, as Co-Personal Representative of the
Estate of MICHAEL SCLAWY-ADELMAN,

Plaintiffs,

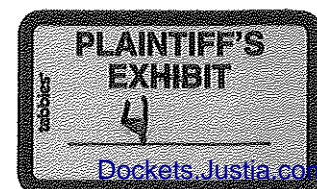
v.

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 ANDREW L. SCHMIDT,
MOTION TO PRESERVE MATERIAL EVIDENCE AS TO MICHAEL
ADELMAN'S AND HIS FAMILY'S COMPUTERS**

The Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, by and through the undersigned counsel, and in accordance with the applicable Federal Rules of Civil Procedure and Local Rules of the Southern District of Florida, hereby file this Motion to Preserve Material Evidence as to Michael Adelman's and his Family's Computers, as follows:

1. Plaintiffs allege these Defendants were negligent in their leading of a Boy Scout hike during which Plaintiffs' minor son, Michael Adelman, passed away. [DE 20].



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2. Michael Adelman's troop (Troop 111) and scout leaders communicated in e-mail to the scouts and their families, including Michael Adelman and Plaintiffs in this lawsuit, his parents.

3. Plaintiffs Howard Adelman (Michael's father) Judith Sclawy-Adelman (Michael's mother) were actively involved in attending troop meetings and troop activities. Howard Adelman participated in campouts, and Judith Sclawy-Adelman attended troop meetings.

4. In order to stay apprised of these activities and their coordination, Plaintiffs received electronic mail (e-mail) directed to Michael's troop (Troop 111) regarding various scouting activities -- including e-mails about the subject hike -- throughout Michael's involvement with the Boy Scouts.

5. The Defendants request that all computers and e-mail accounts that were utilized by Plaintiffs and/or Michael, to access e-mails received from Troop 111, to forward e-mails received from Troop 111, to reply to e-mails received from Troop, to send e-mails to members of Troop 111, and to access information regarding Troop 111 activities (including, but not limited to the subject hike), be preserved as material evidence in an original and unmodified condition.

6. These computers, the electronic information, and e-mail accounts are material evidence in this case due to the nature of Plaintiffs' allegations that these Defendants organized, planned and led the subject hike. [DE 20, ¶ 4].

7. Plaintiffs themselves participated in Boy Scout events by, inter alia, receiving e-mails about Troop 111 happenings. Those specific e-mails must be disclosed

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and preserved. In addition, all information regarding access to, sending, and receiving those e-mails, and all information regarding the those computers (including existence and custody) on which such information was transmitted, must be disclosed, preserved and ultimately produced.

MEMORANDUM OF LAW AND ARGUMENT

“The Federal Rules of Civil Procedure strongly favor full discovery whenever possible.” *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir. 1985). The existence, custody, condition and location of the computers used to access information about the hike, alone, bears direct relevance to Plaintiffs’ claims against these Defendants, and those facts alone constitute discoverable information. *Fed. R. Civ. P. 26(b)(1)*.

Florida definitely recognizes a duty to preserve evidence after a lawsuit has been filed, and sometimes even when litigation is anticipated. See *Silhan v. Allstate Ins. Co.*, 236 F. Supp. 2d 1303, 1311 (N.D. Fla. 2002). Because the requested computer information is evidence that is causally connected to Plaintiffs’ claims and is vital to the Defendants preparation for trial, if Plaintiffs destroy or lose this evidence, spoliation of evidence would likely occur. *Id.*

The Advisory Committee Notes to Rule 26 indicate that “[t]he purpose of discovery is to allow a **broad** search for facts . . . which may aid a party in the preparation or presentation of his case.” Adv. Com. Notes, 1946 Amendment, R. 26, Fed.R.Civ.P. (citations omitted) (emphasis added). The discovery provisions of the Federal Rules of Civil Procedure, when properly used, prevent judicial surprises and are

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to be broadly and liberally construed. *Burns v. Thiokol Chem. Corp.*, 483 F.2d 300, 304 (5th Cir. 1973) (citations omitted).

Therefore, Plaintiffs must properly disclose such items and information, they must preserve this evidence under Florida law and Federal law, and produce to these Defendants the requested information without any further delay.

LR 7.1 CERTIFICATION

This Defendant has conferred with Plaintiff's counsel in an attempt to resolve this issue without court involvement, but to date, has not been able to achieve compliance.

WHEREFORE, the Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, respectfully request that this Honorable Court enter an Order granting this Motion, providing the relief requested in this Motion and the attached proposed Order, and, for any other relief this Honorable Court deems just and proper.

I HEREBY CERTIFY that on January 4, 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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