

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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

HOWARD ADELMAN et al.,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA et al.,

Defendants.

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**PLAINTIFFS' RESPONSE TO SOUTH FLORIDA COUNCIL'S  
MOTION FOR PROTECTIVE ORDER**

The motion of South Florida Council ["SFC"] for Protective Order contains a number of significant factual inaccuracies, which result in a misrepresentation of prior discovery efforts in this case as well as the subject matter of the discovery which is being sought.

Contrary to the statements in the motion, the Plaintiffs have taken **1** Rule 30(b)(6) corporate representative deposition of the SFC in this case, **not 3**. The sole corporate representative deposition of SFC occurred on March 30, 2011, when it produced Joshua Crist in response to the Plaintiffs' Rule 30(b)(6) notice. See Exhibit "1" hereto. Although the Plaintiffs had previously deposed Jeff Hunt and John Anthony, these individuals were deposed as **witnesses** and not subject to Rule 30(b)(6), nor subject to its requirements and ramifications.

The motion also attempts to belittle the nature and character of the information sought in an effort to make it seem unimportant. The issue is not whether Mr. Crompton **received** a "Trained" patch, but instead whether he underwent the *specific* program and training set forth by the BSA for adult leaders to be considered a "Trained" leader, which is signified by the award of the "Trained" emblem<sup>1</sup>. Although the Boy Scouts of America ["BSA"] encouraged leaders to complete this specific training, it is not required. Reigelman deposition, pp. 130-4, Exhibit "2."

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<sup>1</sup> The BSA offers many different types of training in many different areas. The deposition notice refers to the "Trained" emblem as a means of distinguishing between generic training and completion of the specific curriculum required to be a "Trained" leader.

Contrary to the impression sought to be conveyed by SFC's motion, neither Mr. Hunt<sup>2</sup> nor Mr. Anthony, who both appeared as witnesses, were even asked about whether Mr. Crompton had taken the specific courses and curriculum necessary to be a "Trained" leader. In the pages attached to the Defendant's motion as Exhibit D, Mr. Hunt was asked some questions about training materials provided by the BSA to leaders **in general**. The only questioning related to Mr. Crompton and Schmidt's specific training dealt with their training as "merit badge counselors." See Hunt Deposition, pp. 147-8, Exhibit "3." As also reflected by the excerpts from Mr. Anthony's deposition attached to the Defendant's motion as Exhibit E, all of his questioning likewise referred to different types of training provided by the BSA and SFC in general, but not as it specifically related to Crompton.

The Plaintiff did, however, inquire specifically as to this issue on the deposition of SFC's corporate representative, Joshua Crist. Although item number 8 of the notice of corporate representative deposition specifically designated the "policies, procedures and guidelines for Scout Master training," as one of the areas of inquiry, Mr. Crist was unable to fully or adequately respond to these inquiries regarding Mr. Crompton. While the SFC cited the portion of Mr. Crist's deposition where he initially stated that he "believed"<sup>3</sup> Crompton was a trained leader, it omitted the subsequent portion of the inquiry, when Plaintiff's counsel went through the specific courses required to become a "Trained" leader and the lack of documentation on the part of the South Florida Council that Mr. Crompton had actually taken and passed these courses. Due to space limitations, the Plaintiffs cannot set forth each of these questions here, however, would direct the Court's attention to Exhibit "4" attached hereto in which Mr. Crist conceded:

Q: What documents, if any, would exist at the SFC, other than Exhibit 10, which would let you determine whether or not Mr. Crompton was a Trained leader?

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<sup>2</sup> The Defendant cites the length of Mr. Hunt's deposition in support of its motion. While Mr. Hunt's deposition did start at 9:15 a.m. and conclude at 4:15 p.m., there were virtually hourly breaks including a substantial one for lunch. Mr. Hunt's deposition, which covered 202 pages of transcript, paled in comparison to the 302 page deposition, which the Defendants took of Judith Sclawy and the 382 pages of Howard Adelman, which both required 2 days to complete. Even the deposition of Carter Conrad, the forensic phone expert, who was recently deposed by the Defendant Crompton, lasted for 6 ½ hours and covered 216 pages of transcript.

<sup>3</sup> Crompton was no less specific on his deposition, as he also merely likewise testified that he "believe[d]" that he had completed the necessary training. [D.E. 277-2, page 2].

A: That would be it.  
 Q: Exhibit 10, you are referring to?  
 A: Yes.  
 ...  
 Q: But just so we are clear on this, at least **based upon the official records that are maintained by the SFC**, which you have indicated would be Exhibit 10, **there is no indication that Mr. Crompton was a Trained leader.**  
 A: From Exhibit 10, correct.  
 ...  
 Q: I mean, you are the director of field services, and if you can't figure out from these documents whether he was trained or not, who would be able to make that determination from the South Florida Council?  
 A: I guess you would have to look into it. . .  
 Q: So at this point, you don't know who can answer the question?  
 A: Correct.

Crist deposition, pp. 70-78, Exhibit "4" (emphasis added).

Following the inability of the SFC's own corporate representative to be able to answer this question, the Plaintiffs propounded a set of interrogatories in an effort to smoke out this information. In response, SFC indicated that according to its records, Crompton had completed the following courses: (1) Youth Protection Training, (2) Fast Start Training, (3) New Leader Essentials (now called This is Scouting) and (4) Introduction to Outdoor Leader Skills." The SFC, however, did not have a record that Mr. Crompton had completed the fifth required course, "Position Specific Training," which was the training specifically designed for Scout Masters and Assistant Scout Masters. The answers to interrogatories go on to state, however, that this course was a "pre-requisite" to completing the Introduction to Outdoor Leadership Skills and therefore, SFC **assumes** that Mr. Crompton completed the position specific training." (emphasis added).

Subsequently, undersigned counsel entered into numerous conversations and written communications with counsel for the SFC. See Exhibit "5." As reflected therein, it was pointed out that the SFC's records for Schmidt specifically identified all 5 courses as well as the fact that he had been provided with the "Trained leadership" award. See Exhibit "5." Accordingly, inquiry was made as to why the records for Crompton didn't show the completion of all 5 courses or the provision of the "Trained leadership award."

Despite the discrepancy in SFC's records concerning Schmidt and Crompton, undersigned counsel repeatedly advised counsel for the SFC that he would cancel the deposition if he could provide either some documentation that Crompton had in fact completed the fifth course or that it was in fact a pre-requisite for another course he had completed. See Exhibit "5." Counsel for the

SFC indicated that there was no such documentation, however, produced several additional documents, which were attached as Exhibit G and H to its motion. Not only do these exhibits fail to answer the specific question, but they provide further support for the fact that Leadership Specific Training is a necessary course (G) and that there is no record that Crompton ever took it prior to the subject hike (H).<sup>4</sup>

The adequacy of Mr. Crompton's training is a significant issue in this case, particularly since there will be considerable evidence presented to show that he failed to recognize the signs and symptoms of Michael's impending heat exhaustion, which was allowed to progress into heat stroke and his eventual death. There will also be considerable evidence presented regarding the failure of Mr. Crompton (and Mr. Schmidt) to follow Boy Scout policies, rules and regulations. The course for which there is no documentation is an important one that includes safety components and a presentation of the BSA's "Trek Safely" guidelines. See Exhibit "6" and "7."

Therefore, contrary to SFC's motion, the Plaintiffs' notice is clearly not repetitive and is designed to get to the bottom of a very specific, discrete issue, which is highly relevant to the issues in this case. Although the Plaintiff has made numerous attempts to try and obtain this information voluntarily, it has been unable to do so as reflected by the attached correspondence. The Defendant should not be rewarded for producing an unprepared witness to appear as a corporate representative.

Finally, the Defendant's implication that the deposition was "unilaterally noticed," ignores the fact reflected in the attached correspondence that Plaintiffs' counsel repeatedly offered to reschedule the deposition to a more convenient time, if counsel for the Defendant wished.

**Dated: August 17, 2011.**

Respectfully submitted,

/s/ Robert D. Peltz  
**ROBERT D. PELTZ** (Fla. Bar No. 220418)

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **August 17, 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

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<sup>4</sup> The records does show that Crompton first took the "Trek Safely" course on March 6, 2011, 2 days before his deposition.

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

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