

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

**Miami Division**

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

Plaintiffs,

vs.

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

Defendants.

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

District Ct. Judge: Alan S. Gold

Magistrate Judge:

**DEFENDANT'S, BOY SCOUTS OF AMERICA,  
AMENDED ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW, Defendant, Boy Scouts of America, by and through its undersigned counsel, and pursuant to Federal Rule of Civil Procedure 15(a)(1)(A),<sup>1</sup> files its Amended Answer and Affirmative Defenses to Plaintiffs' Complaint as follows:

Each and every allegation of Plaintiffs' Complaint not expressly admitted herein is denied.

1. Admitted.
2. Admitted that Michael Sclawy-Adelman was a member of Boy Scout Troup 111, sponsored by Plantation United Methodist Church which is located in the Pine Island District of the South Florida Council.
3. Defendant is without knowledge to either admit or deny the allegations in paragraph 3, and therefore denies paragraph 3 in its entirety and demands strict proof thereof.

<sup>1</sup> The Answer and Affirmative Defenses filed by Boy Scouts of America was served on July 1, 2010. Pursuant to Federal Rule of Civil Procedure 15(a)(1)(A), Boy Scouts of America hereby amends its pleading once as a matter of course within 21 days after serving it.

4. Defendant is without knowledge to either admit or deny the allegations in paragraph 4, and therefore denies paragraph 4 in its entirety and demands strict proof thereof.
5. Defendant is without knowledge to either admit or deny the allegations in paragraph 5, and therefore denies paragraph 4 in its entirety and demands strict proof thereof.
6. Defendant denies paragraph 6 in its entirety and demands strict proof thereof.
7. Defendant is without knowledge to either admit or deny the allegations in paragraph 7, and therefore denies paragraph 7 in its entirety and demands strict proof thereof.
8. Defendant is without knowledge to either admit or deny the allegations in paragraph 8, and therefore denies paragraph 8 in its entirety and demands strict proof thereof.
9. Defendant admits that Michael Sclawy-Adelman died on May 9, 2009; however, Defendant is without knowledge to either admit or deny the remaining allegations in paragraph 9, and therefore denies the remaining allegations in paragraph 9 and demands strict proof thereof.
10. Defendant is without knowledge to either admit or deny the allegations in paragraph 10, and therefore denies paragraph 10 in its entirety and demands strict proof thereof.
11. Defendant is without knowledge to either admit or deny the allegations in paragraph 11, and therefore denies paragraph 11 in its entirety and demands strict proof thereof.
12. Admitted.
13. Defendant is without knowledge to either admit or deny the allegations in paragraph 13, and therefore denies paragraph 13 in its entirety and demands strict proof thereof.
14. Admitted that the Boy Scouts of America is authorized by the United States Congress to make available the scouting program within the United States, including the State of Florida.
15. Admitted that the Boy Scouts of America Headquarters is located in Irving, Texas.
16. Defendant denies paragraph 16 as worded and demands strict proof thereof.
17. Defendant denies paragraph 17 as worded and demands strict proof thereof.

18. Admitted that the Boy Scouts of America grants Charters to locally organized councils and to community organizations that allow them to use scouting programs developed by the Boy Scouts of America.
19. Admitted that South Florida Council is a Florida non-profit corporation organized by local community leaders to make available scouting programs in the South Florida area, with its headquarters in Miami Lakes, Florida.
20. Admitted that South Florida Council receives a Charter from the Boy Scouts of America, which allows South Florida Council to use scouting programs.
21. Defendant denies paragraph 21 as worded and demands strict proof thereof.
22. Defendant denies paragraph 22 as worded and demands strict proof thereof.
23. Defendant is without knowledge to either admit or deny the allegations in paragraph 23, and therefore denies paragraph 23 in its entirety and demands strict proof thereof.
24. Admitted that Plantation United Methodist Church received a Charter from the Boy Scouts of America that allowed Plantation United Methodist Church to establish a Boy Scout Troup.
25. Defendant denies paragraph 25 as worded and demands strict proof thereof.
26. Defendant denies paragraph 26 as worded and demands strict proof thereof.
27. Defendant is without knowledge to either admit or deny the allegations in paragraph 27, and therefore denies paragraph 27 in its entirety and demands strict proof thereof.
28. Defendant is without knowledge to either admit or deny the allegations in paragraph 28, and therefore denies paragraph 28 in its entirety and demands strict proof thereof.
29. Defendant is without knowledge to either admit or deny the allegations in paragraph 29, and therefore denies paragraph 29 in its entirety and demands strict proof thereof.

30. Defendant is without knowledge to either admit or deny the allegations in paragraph 30, and therefore denies paragraph 30 in its entirety and demands strict proof thereof.

31. Defendant is without knowledge to either admit or deny the allegations in paragraph 31, and therefore denies paragraph 31 in its entirety and demands strict proof thereof.

32. Defendant is without knowledge to either admit or deny the allegations in paragraph 32, and therefore denies paragraph 32 in its entirety and demands strict proof thereof.

### **JURISDICTION**

33. Defendant is without knowledge to either admit or deny the allegations in paragraph 33, and therefore denies paragraph 33 in its entirety and demands strict proof thereof.

### **COUNT I** **NEGLIGENCE OF HOWARD K. CROMPTON**

34. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 13, 27-29, and 33 as if fully stated herein.

35. The allegations in paragraph 35 are directed toward another Defendant. As such, the allegations do not require a response from Boy Scouts of America.

36. The allegations in paragraph 36, and subsections (a-r), are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

37. The allegations in paragraph 37 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

38. The allegations in paragraph 38 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

39. The allegations in paragraph 39 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT II**  
**NEGLIGENCE SUPERVISION BY HOWARD K. CROMPTON**

40. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 13, 27, and 33 as if fully stated herein.
41. The allegations in paragraph 41 are directed toward another Defendant. As such, the allegations do not require a response from The South Florida Council.
42. The allegations in paragraph 42, and subsections (a-n), are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
43. The allegations in paragraph 43 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
44. The allegations in paragraph 44 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
45. The allegations in paragraph 45 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT III**  
**NEGLIGENCE OF ANDREW L. SCHMIDT**

46. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 13, and 30-33 as if fully stated herein.
47. The allegations in paragraph 47 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
48. The allegations in paragraph 48, and subsections (a-r), are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

49. The allegations in paragraph 49 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

50. The allegations in paragraph 50 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

51. The allegations in paragraph 51 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT IV**  
**NEGLIGENT SUPERVISION BY ANDREW L. SCHMIDT**

52. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 13, 30 and 33 as if fully stated herein.

53. The allegations in paragraph 53 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

54. The allegations in paragraph 54, and subsections (a-n), are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

55. The allegations in paragraph 55 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

56. The allegations in paragraph 56 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

57. The allegations in paragraph 57 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT V**  
**NEGLIGENCE OF BOY SCOUTS OF AMERICA**

58. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.
59. Defendant is without knowledge to either admit or deny the allegations in paragraph 59, and therefore deny paragraph 59 in its entirety and demand strict proof thereof.
60. Defendant denies paragraph 60 including subsections (a-p) in its entirety and demands strict proof thereof.
61. Defendant denies paragraph 61 in its entirety and demands strict proof thereof.
62. Defendant denies paragraph 62 in its entirety and demands strict proof thereof.
63. Defendant is without knowledge to either admit or deny the allegations in paragraph 63, and therefore deny paragraph 63 in its entirety and demand strict proof thereof.

**COUNT VI**  
**NEGLIGENCE OF THE SOUTH FLORIDA COUNCIL, INC.,**  
**BOY SCOUTS OF AMERICA**

64. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.
65. The allegations in paragraph 65 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
66. The allegations in paragraph 66, including all subparts, are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
67. The allegations in paragraph 67 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

68. The allegations in paragraph 68 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

69. The allegations in paragraph 69 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT VII**  
**THE SOUTH FLORIDA COUNCIL INC., BOY SCOUTS OF AMERICA:**  
**NEGLIGENT SELECTION AND RETENTION OF SCOUTMASTERS**

70. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.

71. The allegations in paragraph 72 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

72. The allegations in paragraph 72 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

73. The allegations in paragraph 73 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

74. The allegations in paragraph 74 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

75. The allegations in paragraph 75 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.



**COUNT VIII**  
**THE SOUTH FLORIDA COUNCIL INC., BOY SCOUTS OF AMERICA:**  
**NEGLIGENT SUPERVISION**

76. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.
77. The allegations in paragraph 77 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
78. The allegations in paragraph 78 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
79. The allegations in paragraph 79 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
80. The allegations in paragraph 80 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
81. The allegations in paragraph 81 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT IX**  
**NEGLIGENCE OF PLANTATION UNITED METHODIST CHURCH**

82. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.
83. The allegations in paragraph 83 are directed toward another Defendant. As such, the allegations do not require a response from Boy Scouts of America.
84. The allegations in paragraph 84, and subsections (a-r), are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

85. The allegations in paragraph 85 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

86. The allegations in paragraph 86 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

87. The allegations in paragraph 87 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT X**  
**PLANTATION UNITED METHODIST CHURCH:**  
**NEGLIGENT SELECTION AND RETENTION OF SCOUTMASTERS**

88. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.

89. The allegations in paragraph 89 are directed toward another Defendant. As such, the allegations do not require a response from Boy Scouts of America.

90. The allegations in paragraph 90, and subsections (a-f), are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

91. The allegations in paragraph 91 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

92. The allegations in paragraph 92 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

93. The allegations in paragraph 93 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT XI**  
**PLANTATION UNITED METHODIST CHURCH:**  
**NEGLIGENT SUPERVISION**

94. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.
95. The allegations in paragraph 95 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
96. The allegations in paragraph 96, and subsections (a-g), are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
97. The allegations in paragraph 97 are directed toward another Defendant. As such, the allegations do not require a response from Boy Scouts of America.
98. The allegations in paragraph 98 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
99. The allegations in paragraph 99 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT XII**  
**PLANTATION UNITED METHODIST CHURCH:**  
**VICARIOUS LIABILITY FOR ACTS OF HOWARD K. CROMPTON**

100. Defendant re-alleges and incorporates by reference their answers to paragraphs 1 through 33, as if fully stated herein.
101. The allegations in paragraph 101 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
102. The allegations in paragraph 102 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

103. The allegations in paragraph 103 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
104. The allegations in paragraph 104 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
105. The allegations in paragraph 105, including subparts (a-r) are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
106. The allegations in paragraph 106 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
107. The allegations in paragraph 107 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
108. The allegations in paragraph 108 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

**COUNT XIII**  
**PLANTATION UNITED METHODIST CHURCH:**  
**VICARIOUS LIABILITY FOR ACTS OF ANDREW L. SCHMIDT**

109. Defendant re-alleges and incorporates by reference its answers to paragraphs 1 through 33, as if fully stated herein.
110. The allegations in paragraph 110 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
111. The allegations in paragraph 111 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.
112. The allegations in paragraph 112 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

113. The allegations in paragraph 113 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

114. The allegations in paragraph 114, and subparts (a-r) are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

115. The allegations in paragraph 115 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

116. The allegations in paragraph 116 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

117. The allegations in paragraph 117 are directed toward another Defendant. As such, the allegations do not require a response from the Boy Scouts of America.

## **AFFIRMATIVE DEFENSES**

118. For its first affirmative defense, Defendant affirmatively avers that Plaintiffs' Complaint fails to state a claim upon which relief can be granted for negligence against Boy Scouts of America.
119. For its second affirmative defense, Defendant affirmatively avers that the evidence may show that the death of Michael Sclawy-Adelman was proximately caused by the negligence of the Plaintiffs and/or Michael Sclawy-Adelman, and therefore, Plaintiffs are barred from recovery against Defendant.
120. For its third affirmative defense, Defendant affirmatively avers that the evidence may show that the Plaintiffs and/or Michael Sclawy-Adelman were comparatively negligent and that to the extent that his death was caused by Defendant in any way, Plaintiffs' recovery shall be reduced in accordance with Plaintiffs' and/or Michael Sclawy-Adelman's respective comparative negligence.
121. For its fourth affirmative defense, Defendant affirmatively avers that the evidence may show that Michael Sclawy-Adelman's death resulted from an intervening and superseding cause not related to any actions or inactions on behalf of the Defendant.
122. For its fifth affirmative defense, Defendant affirmatively avers that it is entitled to a set-off from any and all collateral sources that have compensated the Plaintiffs for their alleged damages.
123. For its sixth affirmative defense, Defendant affirmatively avers that any alleged damages were the result of negligence on the part of Third Parties who were not under the care, custody or control of Defendant, and therefore the Plaintiffs are unable to recover as against this Defendant.

124. For its seventh affirmative defense, Defendant affirmatively avers that it is not liable for Michael Sclawy-Adelman's death as he was not under the direction or control of this Defendant.
125. For its eighth affirmative defense, Defendant affirmatively avers that the evidence may show that the Plaintiffs and/or Michael Sclawy-Adelman assumed the risk related to the incident.
126. For its ninth affirmative defense, Defendant affirmatively avers that the evidence may show that Michael Sclawy-Adelman's death was proximately caused, in whole or in part, by intervening or superseding causes events that were extraordinary under the circumstances and not foreseeable in the normal course of events.
127. For its tenth affirmative defense, Defendant affirmatively avers that Plaintiff's claims are barred, in whole or in part, to the extent that the evidence shows that Michael Sclawy-Adelman's death was caused by a preexisting or unrelated medical condition, disease or illness.
128. For its eleventh affirmative defense, Defendant affirmatively avers that Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver, pursuant to the terms and conditions of the "PARENT PERMISSION FORM" executed by Michael Sclawy-Adelman's parent/guardian on August 20, 2008.
129. For its twelfth affirmative defense, Defendant affirmatively avers that Plaintiff's claims are barred, in whole or in part, by the doctrine of release, pursuant to the terms and conditions of the "PARENT PERMISSION FORM" executed by Michael Sclawy-Adelman's parent/guardian on August 20, 2008.
130. For its thirteenth affirmative defense, Defendant affirmatively avers that Plaintiff's claims are barred, in whole or in part, by the doctrine of spoliation, because (upon information and

belief) an autopsy was scheduled to be performed by the Collier County Sheriff's Department to determine the cause of death for Michael Sclawy-Adelman, but as a result of Plaintiffs' instructions, was cancelled. The physical condition at the time of death is in controversy and the medical examiner's autopsy would have been the most medically reasonable method to determine Michael Sclawy-Adelman's physical condition at the time of death. See In re Certain Asbestos Cases, 113 F.R.D. 612, 614 (N.D.Tex. 1986); Hammer v. Rosenthal Jewelers Supply Corp., 558 So.2d 460, 461 (Fla. 4<sup>th</sup> DCA 1990).

131. This Defendant reserves the right to allege other affirmative defenses as they may arise during the course of discovery.

### **TRIAL BY JURY DEMAND**

132. Defendant demands trial by jury of all issues so triable as a matter of right by jury.

By:\_\_\_\_s/Kevin D. Franz \_\_\_\_\_  
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Attorneys for Defendants, Boy Scouts of  
America and The South Florida Council, Inc.



**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true copy of the foregoing was mailed July 13, 2010 to:  
Mark A. Sylvester, 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.,  
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By: \_\_\_\_\_s/Kevin D. Franz\_\_\_\_\_  
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