

**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,

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

Plaintiffs,

District Ct. Judge: Alan S. Gold

vs.

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

Defendants.

**DEFENDANTS, SOUTH FLORIDA COUNCIL AND BOY SCOUTS OF AMERICA'S
MOTION TO COMPEL PLAINTIFFS TO PRODUCE COPIES OF ITEMS INSPECTED ON
NOVEMBER 24, 2010**

COMES NOW, Defendants, South Florida Council and Boy Scouts of America, by and through their undersigned counsel, and pursuant to Local Rule 26.1(h)(2) and Federal Rules of Civil Procedure 26, 34 and 37, hereby move to compel Plaintiffs to produce documents inspected on November 24, 2010 and those in response Request for Production numbers 24, 29, 61, 71, 72 and 84 and states more fully as follows:

1. On July 16, 2010, South Florida Council and Boy Scouts of America propounded requests to produce on Plaintiffs.
2. Plaintiffs responded to the same on September 10, 2010.
3. Request number 24 asks for:

Copies of all documents in possession of the Plaintiff(s) or the Plaintiff's agents, which support the Plaintiff's allegations that Defendant South Florida Council was negligent

4. Plaintiffs' response reads:

Objection, work product, attorney-client privilege, over broad, vague, ambiguous, improper in form and scope. Without waiving said objection, the following documents are available for inspection at a mutually convenient time:

- 1. Reports furnished by the National Park Service**
- 2. Collier County Sheriff's Office Offense Incident Report**
- 3. Scoutmaster and Assistant Scoutmaster Leader Specific Training**
- 4. Introduction to Outdoor Leader Skills**
- 5. Guide to Safe Scouting**
- 6. Trek Safe[t]y**
- 7. BSA's Sweet 16 of Safety**
- 8. Health and Safety Guide**
- 9. The Scoutmaster Handbook**
- 10. The Boy Scout Handbook**
- 11. Fieldbook**
- 12. Merit Badge Series: Personal Fitness**
- 13. Merit Badge Series: First Aid**
- 14. Merit Badge Series: First Aid**
- 15. Merit Badge Series: First Aid**
- 16. Merit Badge Series: First Aid**
- 17. Passport to High Adventure**
- 18. Troop Committee Guidebook**
- 19. Troop Program Features-Volume II**

5. Request number 61 asks for "*Copies of all other documents in the possession or control of the Plaintiffs which support the Plaintiffs' claim that the Defendants are liable for the damages being claimed in this case.*" Request number 84 asks for "*Copies of all BSA guidelines and standards that the plaintiffs examined before suing BSA and alleging, in paragraph 60, multiple failures by BSA.*" Plaintiffs' responses to numbers 61 and 84 are identical to the response to number 24.

6. Request number 29 asks for:

Copies of all of the personal property and equipment believed to have been involved in this incident and which is in the possession of plaintiffs, their attorneys or agents.

7. Plaintiffs' response reads:

To the extent that these items are in the possession, custody, or control of the Plaintiffs', they will be made available for inspection at a mutually convenient time

8. Request for number 71 asks for and was responded to as follows:

Produce for inspection at a mutually convenient time the decedent's scouting related property which includes but is not limited to:

1. Scout Uniform

Will be produced for inspection at a mutually convenient time.

2. Merit Badges and Merit Badge Sash

Will be produced for inspection at a mutually convenient time.

3. Water Back Packs

Will be produced for inspection at a mutually convenient time.

4. Merit Badge cards showing completion or partial completion

Will be produced for inspection at a mutually convenient time. Copies attached.

5. Merit Badge books

Will be produced for inspection at a mutually convenient time.

6. All records of Advancement

Those documents currently in the Plaintiffs' possession, custody or control are attached hereto.

7. Boy Scout Handbook

Will be produced for inspection at a mutually convenient time.

8. All records and worksheets related to decedent's work on Merit Badges-and Advancement

Those documents currently in the Plaintiffs' possession, custody or control are attached hereto.

9. Decedent's work book, signed project approvals, and notes related to his Eagle Scout Project.

Those documents currently in the Plaintiffs' possession, custody or control are attached hereto. In addition see attached.

10. Worksheets, activity logs; and performance records related to decedent's work toward the Personal Fitness, Hiking, Cycling and Personal Management Merit Badges.

Those documents currently in the Plaintiffs' possession, custody or control are attached hereto.

11. Photographs and/or videos related to decedent's involvement in Scouting, involvement in his troop and/or involvement in the Methodist Church

Objection, over broad. Without waiving said objection, see Exhibit 1.

12. Documentation and/or worksheets for any Merit Badges completed, or Merit Badges started by decedent but not completed.

None currently in Plaintiffs' possession, custody or control.

13. Documentation, worksheets and/or Merit Badge Cards for the Merit badges completed by decedent.

Those documents currently in the Plaintiffs' possession, custody or control are attached hereto.

14. Family albums containing photographs of Plaintiff.

Objection, over broad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

9. Request for number 72 asks for and was responded to as follows:

Produce for inspection at a mutually convenient time each survivors' scouting related property which includes but is not limited to:

1. Scout Uniform

Will be produced for inspection at a mutually convenient time.

2. Scout Master Handbook

None currently in Plaintiffs' possession, custody or control.

3. Records of Training received in Scouting

See attached.

4. All cards and records related to completion of training which used programs associated with The Boy Scouts of America, The American Red Cross, the YMCA, the YWCA, the American Heart Association or similar organizations.

Objection, over broad, not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, see attached.

5. Troop Committee Guide Book

None currently in Plaintiffs' possession, custody or control.

6. Adult Membership Application

None currently in Plaintiffs' possession, custody or control.

7. Photographs and/or videos related to survivors' involvement in Scouting

Objection, over broad. Without waiving said objection, see Exhibit 1.

8. Correspondence, meeting notes, meeting minutes, Troop Schedules and Calendars

Objection, over broad. Without waiving said objection, see attached.

10. Counsel for the Defendants met at Plaintiffs' counsel's office on November 24, 2010 to review and make copies of the documents and materials responsive to requests for production numbers 24, 29, 61, 71, 72 and 84.

11. What took place at the document examination was transcribed and is attached hereto as **Exhibit "A."** Throughout the examination, counsel for the Defendants read into the record all of the materials *and documents that were produced pursuant to Rule 26 disclosures* as well as formal requests for production. Numerous times during the examination, counsel for the Defendants requested that copies be made of many of the materials. Counsel also explained that such materials were critical in order to prepare for the plaintiffs' depositions. *See pp. 17-18, ll. 25-13 of Exhibit "A."* There were no objections to these requests.

12. Plaintiffs' counsel promised to produce copies of the documents. However, none of the documents have been produced to date.

13. At the December 29, 2010 hearing before Magistrate Judge McAliley, it was announced on the record that the documents still had not been produced. Apparently, law clerks that were responsible for making copies of the requested documents had been off for finals. Thus, the documents were not able to be copied and produced. *See* Transcript of Discovery Conference at p. 40, ll. 2-21 attached as **Exhibit “B.”**
14. Those documents were recently requested in writing again. *See* January 4, 2011 letter attached as **Exhibit “C.”**
15. Those documents were then discussed again at a telephonic conference attended by all counsel on January 4, 2011. There was still no firm date provided for when the materials would be produced.
16. Failure to provide these relevant materials has prejudiced Defendants in at least two ways: (1) counsel for the Defendants are unable to properly prepare for the depositions of the Plaintiffs scheduled for early February and (2) counsel for the Defendants are unable to determine the material witnesses to set for deposition. To that end, the Order Following Discovery Conference [DE 80] requires the parties to list the deponents and dates for deposition. The inability to review the documents discussed above severely limits Defendants’ ability to comply with the Order.

WHEREFORE, DEFENDANT, BOY SCOUTS OF AMERICA and SOUTH FLORIDA COUNCIL respectfully requests that this Honorable Court GRANT its Motion to Compel and require Plaintiffs to produce copies of all documents requested during the November 24, 2010 document review at Plaintiffs’ counsel’s office within 10 days and enter such other relief as this Court deems necessary and just.

CERTIFICATION OF GOOD FAITH

Pursuant to Federal Rule of Civil Procedure 37(a) and Local Rule 7.1(a)(3) the movant has made reasonable efforts to confer with Plaintiff in an effort to obtain the discovery without court action, which have been identified with specificity above, but movant has been unable to do so.

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 sent January 10, 2011 to: Ira H. Leesfield, 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., Grove Plaza Building, 5th floor, 2900 Middle Street, Miami, FL, 33133; Greg Gaebe, Esq., Devang Desai, Esq., Gaebe, Mullen Antonelli, Esco & DiMatteo, 420 S. Dixie Highway, Third Floor, Coral Gables, FL, 33146.

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