

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-CV-22236-ASG

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' UNOPPOSED MOTION TO COMPEL REPORT FROM FORENSIC
LABORATORY REGARDING APPARENTLY MISSING DATA FROM GPS
DOWNLOAD AND TO ALLOW DEPOSITION OF FORENSIC LABORATORY**

COME NOW, the Plaintiffs, HOWARD ADELMAN and JUDITH SCLAWY, by and through their undersigned attorneys and move this Honorable Court for the entry of an order requiring Guardian Digital Forensics to produce a report of their recent court ordered download of the data from Howard Crompton's GPS, to allow the Plaintiffs to depose Lars Daniel, who performed the download to fully develop the record regarding the apparently missing data and to set guidelines for further communications with Guardian Digital Forensics and would respectfully show the Court as follows:

1. On January 28, 2011, this Honorable Court entered its Order Following Discovery Conference [D.E. 118] granting the Plaintiffs' Motion for Preservation of Evidence [D.E. 55] and further granting the Defendant Crompton's request that the data contained in his GPS unit be downloaded by Guardian Digital Forensics, a forensic laboratory selected by the Defendants over the objection of the Plaintiffs.

2. In the same order, the Court also directed the inspection of the cellular phones carried by the decedent and the two Scout leaders on the subject hike by a different expert. In connection with this particular examination, the Court required the expert to file a written report setting forth his findings. The order was silent, however, on whether a report would also be required by Guardian Digital Forensics regarding its download of the GPS data. A copy of the Court's order is attached as Exhibit "1" hereto.

3. On February 21, 2011, representatives of the parties traveled to Guardian Digital Forensics in Raleigh, North Carolina for the so-called forensic download of data. During the course of the download, counsel for the Defendant Crompton objected to any inquiry directed to Lars Daniel, the employee of Guardian Digital Forensics performing the download. Although counsel for the Plaintiffs felt that such inquiry was proper and appropriate, rather than place Mr. Daniel in the position of having to make such a determination, further inquiry was foregone at that time.

4. The following week, Plaintiffs' counsel received an electronic version of the data which had been downloaded from the GPS unit by email. The data was unaccompanied by any other explanation or report. Following some initial difficulties in opening the data, counsel for the Plaintiffs contacted counsel for the Defendant and suggested a conference call with Mr. Daniel to discuss this issue.

5. During the intervening time period in which it took to actually set up the conference with Mr. Daniel, Plaintiffs' expert was able to download the data and determine that a significant portion was missing. This issue was again discussed with Defendant's counsel, who agreed that certain inquiries could be addressed to Mr. Daniel regarding this issue in a joint phone conference.

6. Specifically, the GPS records specific categories of data for each tracking point, in this case: date, time, longitude, latitude and altitude. The tracking points can be set by time (ie: every minute) or by distance (ie: every 50 ft.). Either way, each tracking point should have each category of data.

7. The data is typically downloaded into an Excel type spreadsheet with various columns for the information corresponding to each tracking point, which are listed in rows. The tracking points can be plotted on a map with the information for each tracking point inserted in an explanation box. A copy of the data downloaded from the Defendant Crompton's GPS during the

subject hike in Excel spreadsheet format is attached as Exhibit "2" hereto.

8. When the Park Service originally downloaded the data from the Defendant Crompton's GPS, it took the downloaded data and plotted it on maps showing the route that the scouts took. Copies of these maps are attached as Exhibit "3" hereto. Each tracking point taken from the data is represented by a blue dot.

9. As further reflected on Exhibit "3" the Park Service selected data for specific relevant tracking points and incorporated it into the maps, which were produced as part of the official Park Service Report. This data is contained in the white explanation boxes which have arrows pointing to the relevant selected tracking points. The Park Service did not, however, produce the Excel type spreadsheets, either physically or electronically, which would show the corresponding information for each tracking point. Nevertheless, it is clear from the information provided by the Park Service in the explanation boxes accompanying the selected data points that the data downloaded from the Defendant Crompton's GPS included not only longitude and latitude, but also the time that the GPS was present at each tracking point as well.

10. Although the downloaded data in Exhibit "2," contains the longitude and latitude for each of the corresponding tracking points, there are no time entries whatsoever for the period covered by the hike. During the conference with Lars Daniel and Defendant's counsel, it was determined that Mr. Daniel's downloaded data also did not include any time entries. Therefore, while the time entries obviously existed when the Park Service downloaded the GPS (as reflected by Exhibit "3"), by the time of the Court ordered download, the time entries appear to have disappeared.

11. Possession of the GPS unit has been exclusively in the possession of either the Park Service or the Defendant Crompton, since the date of the subject incident. In order to determine the reason for this discrepancy, the first step should be to require Mr. Daniel to prepare a written report explaining exactly what he did, what he found and what he did not find. Once this is accomplished, the Plaintiff believes that Mr. Daniel should be deposed so that attorneys for all of the parties can ask any necessary questions to help get to the bottom of this apparent discrepancy regarding the time data for the tracking points in order to see what possible explanations exist. Once a sufficient record is established, the parties can then either take whatever action is necessary or seek the appropriate

relief from the Court. Nevertheless, in order to get to the bottom of this mystery, it is imperative that the parties be allowed to develop the appropriate record.

12. As the Court was previously advised, the Plaintiffs had filed a *Touchy* request with the Park Service in order to depose its Rangers who were involved in the investigation into this incident and the downloading of the GPS data. The Plaintiffs have just received a denial of this request from the Department of the Interior. Following subsequent discussions with counsel for the Department of the Interior, the Plaintiffs have filed a renewed request, based in part upon this newly discovered discrepancy between the data downloaded by the Park Service and that by the Court ordered forensic laboratory. This request has been filed and action on it is pending. If this request is denied, it is the intent of Plaintiffs' counsel to request the Court to issue an order compelling the Park Service to produce its employees for deposition to resolve this and other issues.

13. The final issue for which the Plaintiffs seek ruling is the precise role of Lars Daniel and Guardian Digital Forensics in this case and the setting of ground rules for communications with them by counsel in this matter. Although Guardian Digital Forensics was selected by Defendant's counsel, it is not clear whether Mr. Daniel was appointed as a court expert to perform the GPS download or if he is the Defendant's expert, as claimed by the Defendants.

14. The Plaintiffs do not know at this time whether counsel for the Defendants has had substantive discussions with Mr. Daniel or Guardian Digital Forensics. Nevertheless, counsel for the Defendant has objected to inquiries directed to Mr. Daniel by Plaintiffs' counsel during the actual download regarding the process and information obtained.

15. Undersigned counsel has conferred with counsel for the Defendants, who are not opposed to having Mr. Daniel or another representative of Guardian Digital Forensics issue the above-requested report or thereafter appearing for a deposition.

/s/ Robert D. Peltz
ROBERT D. PELTZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 11, 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

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SERVICE LIST

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VS.
BOY SCOUTS OF AMERICA, et al
CASE NO.: 10-CV-22236-ASG**

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

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