

EXHIBIT 6

Robert Peltz

From: Robert Peltz
Sent: Wednesday, March 09, 2011 2:42 PM
To: 'Stevens, Mike'
Subject: Adelman v. BSA

Attachments: DOC030911.pdf



DOC030911.pdf (2
MB)

Dear Mr. Stevens,

I am writing as a follow up to our phone conversation earlier today regarding the apparently missing "time" data, which was just discovered from the recent court ordered examination of Mr. Crompton's GPS. Although the maps prepared by the Park Service following its download of Mr. Crompton's GPS show time information for selected points, the data downloaded during the court ordered inspection show no time data whatsoever for the entire track recording the hike data. Since the GPS has been exclusively in the possession of the Park Service and Mr. Crompton's attorneys, there is now an issue of spoliation of evidence.

I am attaching a copy of the track with the data downloaded from the hike, which we have just recently received from the court ordered inspection. As you will note there is no data whatsoever for time, although there is data for longitude and latitude for each of the tracking points.

Sincerely,

Bob Peltz

Robert D. Peltz
Leesfield & Partners, PA
2350 South Dixie Highway
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-----Original Message-----

From: Toshiba 1st Floor [<mailto:Scanner@leesfield.com>]
Sent: Wednesday, March 09, 2011 12:18 PM
To: Robert Peltz
Subject: Scanned from MFP-05374953 03/09/2011 12:18

Scanned from MFP-05374953.
Date: 03/09/2011 12:18
Pages: 5
Resolution: 200x200 DPI

Robert Peltz

From: Robert Peltz
Sent: Monday, March 21, 2011 5:44 PM
To: 'Stevens, Mike'
Subject: Adelman v. BSA Touhy Request

Attachments: DOC032111.pdf



DOC032111.pdf
(269 KB)

Mike,

As a follow up to our prior correspondence and conversations, I am enclosing a copy of the Answer and Affirmative Defenses filed today by the Defendants Crompton and Schmidt. I would direct your attention to the Second Affirmative Defense on pages 5 and 6, which sets forth the basis of the latest claims against the Park Service that now include negligence for allowing the hike to proceed, negligence in failing to warn the Scouting party, negligence in the emergency response and spoliation of evidence for "tamper[ing] with [Crompton's] GPS device. . . [resulting in] an unauthorized destruction and spoliation of evidence."

I would appreciate your advising me as to the status of our request to depose the Park Rangers in order to respond to these claims as well as the other matters raised in my earlier correspondence.

Thank you,

Bob

Robert D. Peltz
Board Certified Trial Lawyer
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66450-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-CV-22236-ASG
Magistrate Judge: Magistrate Judge Chris M. McAlley

HOWARD 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'S
FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND DEMAND FOR
JURY TRIAL TO PLAINTIFFS' AMENDED COMPLAINT**

Defendants, HOWARD K. CROMPTON and ANDREW L. SCHMIDT, by and
through the undersigned counsel, and in accordance with the applicable Fed. R. Civ. P.,
hereby file this First Amended Answer, Affirmative Defenses and Demand for Jury Trial,
to Plaintiffs' Amended Complaint, as follows:

1. Admitted.
2. Admitted.
3. Admitted that MICHAEL SCLAWY-ADELMAN participated in a hike in
the Florida Trail in the Big Cypress National Park, otherwise denied.
4. Admitted.

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5. Admitted.
6. Denied.
7. Denied.
8. Admitted. Michael became dizzy but Denied he was delirious.
9. Denied.
10. Defendants Deny that Andy and the other two Scouts went in search for water. It is Admitted at the end of the trail water was offered to the Scouts. Otherwise Denied.
11. Defendants are without knowledge to Admit or Deny so therefore, Denied.
12. Defendants are without knowledge to Admit or Deny so therefore, Denied.
13. Admitted.
14. Defendants are without knowledge to Admit or Deny so therefore, Denied.
15. Defendants are without knowledge to Admit or Deny so therefore, Denied.
16. Defendants are without knowledge to Admit or Deny so therefore, Denied.
17. Defendants are without knowledge to Admit or Deny so therefore, Denied.
18. Defendants are without knowledge to Admit or Deny so therefore, Denied.
19. Admitted.
20. Defendants are without knowledge to Admit or Deny so therefore, Denied.
21. Defendants are without knowledge to Admit or Deny so therefore, Denied.
22. Defendants are without knowledge to Admit or Deny so therefore, Denied.
23. Defendants are without knowledge to Admit or Deny so therefore, Denied.
24. Defendants are without knowledge to Admit or Deny so therefore, Denied.

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25. Defendants are without knowledge to Admit or Deny so therefore, Denied.
26. Defendants are without knowledge to Admit or Deny so therefore, Denied.
27. Defendants are without knowledge to Admit or Deny so therefore, Denied.
28. Admitted.
29. Admitted.
30. Defendants are without knowledge to Admit or Deny so therefore, Denied.
31. Admitted.
32. Denied.
33. Defendants are without knowledge to Admit or Deny so therefore, Denied.
34. Admitted that this Court has subject-matter jurisdiction.

Paragraphs 35 through 44 (Count I) are Denied and strict proof thereof is demanded.

Paragraphs 45 through 52 (Count II) are Denied and strict proof thereof is demanded.

Paragraphs 53 through 62 (Count III) are Denied and strict proof thereof is demanded.

Paragraphs 63 through 70 (Count IV) are Denied and strict proof thereof is demanded.

Paragraphs 71 through 94 (Count V) are not directed to these Defendants and therefore are Denied.

Paragraphs 95 through 111 (Count VI) are not directed to these Defendants and therefore are Denied.

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Paragraphs 112 through 133 (Count VII) are not directed to these Defendants and therefore are Denied.

Paragraphs 134 through 139 (Count VIII) are not directed to these Defendants and therefore are Denied.

Paragraphs 140 through 151 (Count IX) are not directed to these Defendants and therefore are Denied.

Paragraphs 152 through 173 (Count X) are not directed to these Defendants and therefore are Denied.

Paragraphs 174 through 179 (Count XI) are not directed to these Defendants and therefore are Denied.

Paragraphs 180 through 191 (Count XII) are not directed to these Defendants and therefore are Denied.

Paragraphs 192 through 204 (Count XIII) are not directed to these Defendants and therefore are Denied.

DEMAND FOR JURY TRIAL

These Defendants demand trial by jury.

FIRST AFFIRMATIVE DEFENSE

The Decedent and/or Plaintiffs conducted themselves in a negligent manner and as a direct and proximate result of their negligence, they caused or contributed to cause the incident and injuries complained of by Plaintiffs in this action. Therefore, the Plaintiffs are barred from recovery in whole or in part against these Defendants on the basis of comparative negligence.

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SECOND AFFIRMATIVE DEFENSE

Plaintiffs' damages herein were partially or totally caused by non-parties or persons over whom these Defendants had no dominion or control and, therefore, Defendants seek entitlement to the defenses and privileges set forth in Section 768.81(3) Florida Statutes, with respect to apportionment of fault principles. Any judgment against these Defendants should be reduced by the apportionment of fault allocated on the verdict form at the time of trial to designated *Fabre* defendants and/or co-defendants in this action. Specifically, Defendants affirmatively aver that any alleged damages were the result of negligence on the part of the U.S. Department of the Interior National Park Service which was not under the care, custody or control of Defendants; and therefore, the Plaintiffs are unable to recover in whole or in part as against this Defendant. See Fabre v. Marin, 623 So.2d 1182 (Fla. 1993). Pursuant to Nash v. Wells Fargo Guard Service, Inc., 678 So.2d 1262 (Fla. 1996), this Defendant may seek amendment to identify other such non-parties or persons as they become known and with due notice to Plaintiff.

These Defendants specifically allege that the U.S. Department of the Interior (hereinafter referred to "National Park Services") was negligent in the following manner which caused or contributed to cause the death of Michael Adelman:

- The National Park Service failed to notify the scout troop of elevated temperatures and humidity in the Park;

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- The National Park Service failed to check on the status of the scout troop despite the National Park Service's knowledge of potentially dangerous temperatures and humidity;
- The National Park Service failed to take measures to alert the troop and the scout masters of dangerous temperatures and humidity despite knowledge the troop was hiking in the Park under these conditions;
- The National Park Service failed to timely respond to the emergency 911 notification. In fact, it took at least 45 minutes to get to the site, and when the National Park Service arrived they could not access the area where Michael Adelman was located to provide treatment.
- The National Park Service failed to send any ATV's out and instead responded in helicopters that ultimately could not land on the terrain.
- In addition, there was inadequate emergency response by the U.S. National Park Service to a life or death emergency in a U.S. park
- The National Park Service tampered with our GPS device and removed valuable data from the GPS device when they downloaded information from it. This was an unauthorized destruction and spoliation of evidence.

These Defendants allege that the above acts or omissions by the Park Service were the proximate cause of Michael Adelman's death and intend to place the National Park Service on the verdict form at the time of trial.

THIRD AFFIRMATIVE DEFENSE

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Plaintiffs expressly and/or impliedly consented to all, or part of actions which Plaintiffs alleges were the cause of any and/or all of their alleged damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against HOWARD K. CROMPTON, and ANDREW L. SCHMIDT, 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.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against, HOWARD K. CROMPTON, and ANDREW L. SCHMIDT, 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.

I HEREBY CERTIFY that on March 16, 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.

WICKER, SMITH, O'HARA, MCCOY &
FORD, P.A.
Attorney for Howard K. Crompton and
Andrew L. Schmidt
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2900 S.W. 28th Terrace
Miami, FL 33133
Phone: (305) 448-3939

CASE NO. 10-CV-22236-ASG

Fax: (305) 441-1745

By: /s/ Frederick E. Hasty, III
Frederick E. Hasty III
Florida Bar No. 260606
fhasty@wickersmith.com

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420 South Dixie Highway, 3rd Floor
Coral Gables, FL 33146

Robert Peltz

From: Stevens, Mike [Mike.Stevens@sol.doi.gov]
Sent: Friday, March 11, 2011 3:43 PM
To: Robert Peltz
Subject: RE: Adelman v. BSA

Dear Bob:

Thank you for this information. As with everything else you have sent, I have passed it on to my clients for review and we will definitely include it in our discussions about how to respond to your "revised" Touhy request.

Mike Stevens

From: Robert Peltz [Peltz@leesfield.com]
Sent: Friday, March 11, 2011 3:34 PM
To: Stevens, Mike
Subject: Adelman v. BSA

Dear Mr. Stevens,

I am writing as a follow up to our conversation earlier this week in support of our renewed *Touhy* request to depose previously identified Park Service employees. As we had discussed, new grounds supporting our request have just arisen during the deposition of the Defendant Howard Crompton this week, which are in **addition** to the grounds set forth in my earlier correspondence.

In his deposition, Mr. Crompton testified that he was "extremely critical" of the emergency response from the Park Service following his call for assistance. I had requested that the transcript of several pages of his deposition be expedited for your review, which are attached hereto. Although he discusses these issues in more detail throughout the entire deposition, you will note from the brief excerpt that Mr. Crompton testified that in scheduling the hike he and the other Troop leader had relied upon the belief that emergency medical assistance would be quickly assessable from the Park Service if needed. Instead, he testified that it took the emergency helicopter at least an hour to arrive, which he further indicated deprived Michael of any chance of survival.

As we had further discussed, all of the Defendants have raised affirmative defenses in their answers contending that the Park Service was negligent and that this negligence was a legal cause of Michael's death. With this latest testimony, the Defendants are therefore now basing their affirmative defense on a number of grounds, including the claims that (1) the Park Service was negligent for issuing a hiking permit when it knew or should have known that temperatures could reach 100 degrees, (2) the Park Service failed to sufficiently warn the Scouts of the risks of heat related illnesses by hiking that particular trail on that particular day and (3) the Park Service was negligent in its emergency response thereby costing Michael any chance of survival.

In addition, it also became clear during the deposition of Mr. Crompton and the other Scout leader, Andrew Schmidt, that both accused the Park Rangers of failing to properly investigate the incident and in inaccurately taking down information during their investigation as they both repeatedly denied making various statements that were attributed to them by the Rangers in their reports. As further addressed in my last correspondence, there is also now a significant new issue involving spoliation of evidence, since the court ordered download of the GPS revealed that important data is now missing. Since that issue was fully discussed in my last letter, I will not repeat everything again here.

Accordingly, it is clear that the testimony of the Park Rangers is necessary not only to rebut these claims in the context of our litigation, but to support the integrity and competency of the U.S. Park Service and its employees. Even though the Department of Interior is not a formal party to this lawsuit, in its

3/11/2011

verdict, the jury will be required to determine whether the Park Service was negligent and whether such negligence played a role in Michael's death,. A verdict finding the Parks Service negligent and responsible, even in part, for Michael's death will significantly impact upon the Park Service's mission and credibility in the future.

If there is any further information that I can provide, please do not hesitate to contact me. I would also be happy to work with you to reduce the number of Department employees who we will need to testify, if that will be of assistance to the DOI in its deliberative process.

Sincerely,

Bob Peltz

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From: Friedman, Lombardi & Olson Court Reporters [mailto:jvcflo@aol.com]
Sent: Thursday, March 10, 2011 1:49 PM
To: Robert Peltz; wsummers@lanereese.com
Subject: Excerpt Howard Crompt taken 03-08-2011

PLEASE ACKNOWLEDGE RECEIPT*

Alejandra Diez
Friedman, Lombardi & Olson
Production Department

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