

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Personal Injury

Steven Marshall Parker,

Court File No.: 62-CV-15-6571

Plaintiff,

Judge: Robyn A. Millenacker

v.

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO AMEND
COMPLAINT TO INCLUDE PUNITIVE
DAMAGES**Boy Scouts of America and Northern Star
Council, Boy Scouts of America,Defendants.

INTRODUCTION

In Minnesota, a Plaintiff may move the Court for leave to seek punitive damages upon a prima facie showing that a defendant acted with deliberate disregard for the safety of others. Here, Plaintiff proves that BSA and NSC acted with deliberate disregard for the safety of others, including Plaintiff, when they intentionally disregarded the information contained in its centralized IV Files showing that pedophiles had infiltrated BSA's troop leadership positions and that those pedophiles often isolated their victims on camping trips and used alcohol, drugs and pornography to groom and ultimately sexually abuse. As a result, BSA and NSC failed to implement child abuse prevention policies that required two adults to be present for all activities (especially camping), forbidding one-on-one activities between Scout Leaders and Scouts as well as a number of other standards and protocols to protect Scouts. Instead, the BSA and NSC chose to misinform the public by keeping the thousands of IV Files secret from the public and law enforcement, leaving Scouts, including Plaintiff, vulnerable to sexual abuse by pedophile Scout Leaders. Consequently, Plaintiff should be allowed to amend his Complaint to seek punitive damages.

DOCUMENTS RELIED UPON

Second Affidavit of Patrick Noaker

- Exhibit 1 - Deposition of Steven Marshall Parker dated September 2, 2016;
- Exhibit 2 - Affidavit of John Doe MG;
- Exhibit 3 - Affidavit of Michael Schulz;
- Exhibit 4 - Deposition of Andrew Momont dated July 13, 2016;
- Exhibit 5 - Excerpts from A Century of Scouting in Northern Star Council;
- Exhibit 6 - Excerpts from the deposition of James J. Terry, Jr. dated March 10, 2011;
- Exhibit 7 - Excerpts from the deposition of John Andrews dated November 13, 2012;
- Exhibit 8 - Petitioner's Brief, *Boy Scouts of America & Monmouth Council, Boy Scouts of America v. Dale*, 530 U.S. 640 (2000) (No. 99-699);
- Exhibit 9 - 1969 Local Council Articles of Incorporation and Bylaws;
- Exhibit 10 - 1968 Annual Report to Congress of Boy Scouts of America;
- Exhibit 11 - Excerpts from the deposition of James J. Terry dated March 11, 2011;
- Exhibit 12 - Excerpts from the 1968 Scoutmasters Handbook;
- Exhibit 13 - *Kerry Lewis v. Boy Scouts of America, et al*, Multnomah County Circuit Court Case No. 0710-11294, Trial Transcript of March 22, 2010 at 993:15 – 994:18 (Nathaniel Marshall);
- Exhibit 14 - Gary Schoener Preliminary Expert Report;
- Exhibit 15 - Ineligible Volunteer File of Irving W. Beck (Minneapolis, Minnesota – 1966);
- Exhibit 16 - Ineligible Volunteer File of Robert James Sykes (Marquette, Michigan – 1966);
- Exhibit 17 - Ineligible Volunteer File of James W. Bartlett (Minneapolis, Minnesota – 1961);
- Exhibit 18 - Ineligible Volunteer File of James Lee Shadle (Iowa City, Iowa 1963);
- Exhibit 19 - Ineligible Volunteer File of Robert L. Hillard (Newton, Kansas 1961);
- Exhibit 20 - Ineligible Volunteer File of Alonzo E. Estes (Evansville, Indiana – 1961);
- Exhibit 21 - Ineligible Volunteer File of Freddy Burger Jr. (Houston, Texas – 1961);
- Exhibit 22 - Ineligible Volunteer File of Charles J. Grover (Trenton, New Jersey – 1961);
- Exhibit 23 - Ineligible Volunteer File of Neil E. Lawrence (Janesville, Wisconsin – 1961);
- Exhibit 24 - Ineligible Volunteer File of Michael Kendrick Boggess (Baltimore, Maryland – 1961);
- Exhibit 25 - Ineligible Volunteer File of Samuel Barry Halpern (New York, New York – 1961);
- Exhibit 26 - Fair and accurate copy of Ineligible Volunteer File of William K. Stuart (Cleveland, Ohio – 1961);
- Exhibit 27 - Ineligible Volunteer File of Neil Francis Stensland (Seattle, Washington – 1961);
- Exhibit 28 - Ineligible Volunteer File of Charles Philip Thompson (Silver Springs, Maryland – 1962);
- Exhibit 29 - Ineligible Volunteer File of Paul Marshall Nathan (Framingham, Massachusetts – 1962);

- Exhibit 30 - Ineligible Volunteer File of Kenneth Leon Clark (Frankfort, Germany – 1962);
- Exhibit 31 - Ineligible Volunteer File of Richard Arlie Hurt (Santa Ana, California - 1962);
- Exhibit 32 – Ineligible Volunteer File of Robert Elmer Huelsman (Cincinnati, Ohio - 1962);
- Exhibit 33 - Ineligible Volunteer File of Jack J. Talamo (New Brunswick, New Jersey - 1962);
- Exhibit 34 - Ineligible Volunteer File of Charles S. McClament (Washington, D.C. - 1964);
- Exhibit 35 - Ineligible Volunteer File of T. Franklin Lawrence (Baltimore, Maryland – 1965);
- Exhibit 36 - Ineligible Volunteer File of Lawrence Arthur Knippel (Wausau, Wisconsin – 1961);
- Exhibit 37 - Ineligible Volunteer File of Richard D. Gates (Worcester, Massachusetts - 1961);
- Exhibit 38 - Ineligible Volunteer File of William R. Pratt (Toms River, New Jersey - 1961);
- Exhibit 39 - Ineligible Volunteer File of Alva D. Linder (Plattsmouth, Nebraska - 1962);
- Exhibit 40 - Ineligible Volunteer File of Robert L. Wantuk (St. Louis, Missouri - 1963);
- Exhibit 41 - Ineligible Volunteer File of Chalma Lee Walker (Littlefield, Texas – 1965);
- Exhibit 42 - Ineligible Volunteer File of Tommy Fletcher Young (West Monroe, LA - 1965);
- Exhibit 43 - LA Times article “Boy Scout Files on Suspected Abuse” published by the Times, December 25, 2012;
- Exhibit 44 - Acknowledgement of Acceptance of Service of Summons and Complaint on Boy Scouts of America;
- Exhibit 45 - Acknowledgement of Acceptance of Service of Summons and Complaint on Northern Star Council;
- Exhibit 46 – 1970-1971 Troop 17 Roster;
- Exhibit 47 – excerpts of 1968 Boy Scout Handbook;

Third Affidavit of Patrick Noaker

- Exhibit 48 – Deposition of Paul Ernst with selected Exhibits; and
- Exhibit 49 – Ineligible Volunteer File of Malcolm Willis McConahy (Minneapolis, MN 1965).

STATEMENT OF FACTS

A. Sexual Abuse of Steven Parker

When Steven Parker was just 11-years-old, he joined Troop 17 of the Boy Scouts of America. (Second Affidavit of Patrick Noaker (hereafter “Noaker 2d Aff.”), Ex. 1 - Steven Parker Deposition, 34:2 – 3) His Scout Master was Phillip Momont. *Id.* at 40:25 – 41:3. Phillip Momont’s son, Andrew, also known as Andy Momont, was a fellow Scout at the time who would go on to serve as the Assistant Scout Master for Troop 17. *Id.* Prior to joining the Boy Scouts, Steven had never heard of, nor had contact with, Andy Momont. *Id.* at 34:17 – 21. Within three months of Steven joining the Boy Scouts of America, he was sexually abused and fondled by Andy Momont for the first time, while he was still only 11-years-old. *Id.* at 38:6 – 8.

The first time that Andy Momont sexually abused Steven Parker was at the Rum River Scout Camp, when Steven was still 11-years-old and Andy was 15. *Id.* at 76:8 – 13. The abuse occurred on only the second night of their stay at the camp. *Id.* at 77:17 - 20. After eating supper, Andy entered Steven’s tent and began to fondle his genitals over his clothing, stating that he was doing a “tent inspection.” *Id.* at 79:2 – 18. Steven resisted Andy’s fondling, moving his hand away, however Andy continued to fondle the boy’s genitals for roughly 20 minutes while he pretended to inspect the tent. *Id.* at 80:4 – 81:9.

Thereafter, Momont’s sexual abuse occurred during and after Boy Scout meetings at the Mt. Olivet Baptist Church, *Id.* at 82:4 – 12; 84:20 – 25; on camping trips at Many Point Scout Camp, *Id.* at 87:7 – 91:7, 93:21 – 98:4, 157:22 – 158:17; on camping trips to Apple River Scout Camp, 98:22 - 100:11; scout trips to the Momont family cabin, 48:4 - 49:5; and on a trip to Canada, 71:20 - 72:18. The sexual abuse consisted of manual masturbation, oral sex and anal penetration. *Id.* at 18:2 - 3; 48:23 – 49:5; 80:4 - 81:9; 165:24 – 165:3. In addition to the sexual abuse, Andy

Momont also physically assaulted the Plaintiff by choking him and even attempting to engage the Plaintiff in auto erotic asphyxiation. *Id.* at 15:17 - 16:8; 165:6 - 21; 166:9 - 11.

In addition, Andy Momont utilized alcohol and marijuana as primary catalysts for his grooming of young Boy Scouts. *Id.* at 39:7 – 15. Steven stated that Andy “always” brought alcohol with him to camping events, both as a scout and as an adult. *Id.* at 125:14 – 22. On several occasions, Steven recalls drinking alcohol with Andy and multiple other boy scouts. *Id.* at 125:23 – 126:12. Andy Momont brought and used marijuana at scouting events both as a scout and as an adult leader. *Id.* at 123:25 – 124:5. Andy also utilized pornography to groom his victims. *Id.* at 50:21 – 25; 52:18 – 20.

Andy Momont’s use of alcohol, marijuana and pornography on Scout outings and at Scout camps is confirmed by other members of Troop 17. For example, John Doe MG recalls the Scouting trips to the Momont family cabin where Andy Momont was the only Scout Leader present. (Noaker 2d Aff., Ex. 2 - John Doe MG Affidavit.) On one occasion, MG recalls seeing Andy Momont openly masturbating in the living room of the cabin. *Id.* MG also recalls times that Andy Momont brought beer to the cabin for the Scouts to drink and marijuana for the Scouts to smoke. *Id.* MG also recalls Andy Momont showing the Scouts Playboy magazines at the cabin. *Id.*

In addition, MG also reports that on one occasion, he attended Many Point Scout camp and right after he attended a public school camp. *Id.* When he was leaving Many Points, Andy Momont gave him beer, gin and vodka to put in his suitcase. *Id.* After he arrived at the school camp, another camper took the alcohol and used it to get a female camper drunk. *Id.* MG got into trouble for this incident, recalling that Andy Momont told him that he should lie about who provided the alcohol. *Id.*

Alcohol consumption by the Scouts was well-known on Troop 17 camping events. MG reports that while the Troop was at Many Point Scout Camp and he was supposed to be spending a night in the wilderness for his Order of the Arrow distinction, he was directed to the main tent of the person who ran the camp and he drank alcohol with Andy Momont and others. *Id.* Another Scout, Mike Schulz, also remembers seeing alcohol on a Scouting camping event at Rum River Scout Camp. (Noaker 2d Aff., Ex. 3 - Affidavit of Michael Schulz.) Mr. Schulz also recalls that Andy Momont and another Scout named Steve had too much to drink one evening. *Id.* This was the first trip under Andy Momont's leadership of Troop 17. *Id.*

B. Phillip Momont's Failure To Act On Accusations Of Sexual Abuse

When Steven Parker was still only 12-years-old, he first reported to his Scout Master, Phillip Momont, that Andy Momont was touching him inappropriately. (*Id.*, Ex. 1 - Parker Depo. at 43:6 – 17.) Steven told Phillip Momont about this during one of their weekly Scout meetings at the Mt. Olivet Baptist Church. *Id.* at 44:11 – 14. His Scout Master's response to the accusations of inappropriate touching was to tell Parker that he did not believe him and that he must be misinterpreting or misunderstanding Andy's touch. *Id.* at 43:20 – 25.

Despite his Scoutmaster's disbelief in his accusations the first time, Steven returned to report his abuse to Phillip Momont again when he was between the ages of 15 and 16 years-old. *Id.* at 46:9 – 47:7. Steven again approached Phillip Momont when Steven first saw that Andy, an Assistant Scout Master at the time, was bringing an entire group of boys up to his cabin to sexually abuse them. *Id.* Steven first asked Phillip whether he knew that his son was using his cabin, and then asked him whether he knew that his son was using the cabin to abuse them. *Id.* Phillip replied that he was unaware Andy was using his cabin for scouting events, and did not mention or question the abuse accusations made by Steven. *Id.* at 47:8 – 20. Phillip instead noted that Andy's

“mannerisms are misinterpreted;” essentially for the second time telling Steven that he was misunderstanding Andy’s actions and that he was not being sexually abused by Andy. *Id.*

C. Andrew Momont Asserted the Fifth When Asked About Sexually Abusing Steven Parker and Other Troop 17 Scouts

During his deposition, when asked about sexually abusing Steven Parker, Andrew Momont asserted his Constitutional Right Against Self-Incrimination under the Fifth Amendment.

Specifically, Andrew Momont testified as follows:

Q: No? Okay.
We are here in a sexual abuse lawsuit. When you were a Scout leader and Steven Parker was a Scout did you have sexual contact with Steven Parker?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: While you were a Scout leader did you have any sexual contact with any other Scouts in your troop?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

(Noaker 2d Aff., Ex. 4 - Andrew Momont Dep. 30:16 - 31:7.)

In addition, Andrew Momont refused to answer questions about reports to the Boy Scouts about his sexual abuse while a Scout Leader:

Q: Was one of the reasons that you stopped scouting because you were not allowed to continue because of reports of sexual abuse?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Have there ever been any reports that you know of, to anyone, whether it be any of the churches or the Viking Council, that you had sexually abused a Scout?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Have you had to respond to any reports of sexual abuse of Scouts?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

Id. at 31:25 - 32:22.

Q: Did you take kids camping?

A: Yes.

Q: As a -- when you were a Scout leader did you take kids camping?

A: Yes.

Q: Do you ever remember going to Rum River Campground?

A: Yes.

Q: Do you remember taking alcohol with you when you went to Rum River Campground?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Do you remember providing alcohol to any underage Scouts on that campout?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Do you remember becoming intoxicated on that campout?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

* * *

Q: As an adult, when you were an adult leader, did Troop 17 ever do any campouts up at your cabin?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

* * *

Q: While at the cabin that we are talking about did you ever take alcohol and give it to Scouts?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Did you ever provide marijuana to Scouts up at the cabin?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Did you ever have sexual contact with any Scouts at your cabin?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Did any of the other Scout leadership know you were taking children up to your cabin?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Did you ever take Scouts skinny dipping while up at your cabin?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Did you provide Scouts in Troop 17 access to pornography, like Playboy Magazines, while up at the cabin?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

Id. at 34:23 – 39:16

Similarly, when asked about the existence of an Ineligible Volunteer File with the BSA, Andrew Momont also asserted his Fifth Amendment Rights:

Q: Do you know, is there an ineligible volunteer file for you?

MR. GARRY: Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

BY MR. NOAKER:

Q: Do you know whether any other Scout leaders in Troop 17 were made aware from any source that you had had sexual contact with the Scouts?

MR. GARRY: · Objection, Fifth Amendment.

THE WITNESS: I am not going to answer that question.

Id. at 33:18 - 34:7.

D. Merger of Viking Council and Indianhead Council Forming Northern Star Council

On March 30, 2005, the voting members of the Viking Council and the Indianhead Council voted to merge the two councils, forming the Northern Star Council, Boy Scouts of America.

(Noaker 2d Aff., Ex. 5 - A Century of Scouting in Northern Star Council, p. 207.) This merger created the fourth largest local council in the United States. *Id.*

E. The BSA “IV Files”

Since at least 1920, Defendant BSA has known that it had a problem with child molesters using Scouting to gain access to boys. Perhaps the most damning evidence of Defendants’ knowledge of a systemic problem in the Scout program is reflected in the existence and contents of the centralized documentation system known as the “Ineligible Volunteer” files (“IV Files”). The “IV File” system has existed in some form since the late 1910s. Originally called the “red flag” system, Defendant Boy Scouts of America (“BSA”) had the system in place by 1920 in part to identify individuals known to pose a danger of sexual molestation to Scouts. (*Kerry Lewis v. Boy Scouts of America, et al.*, Multnomah County Circuit Court Case No. 0710-11294, Trial Transcript of March 22, 2010 at 993:15–994:18 (Nathaniel Marshall), attached as Exhibit 13, Noaker 2nd Aff.) In 1935, there were names of 2,919 men that had been placed in the red flag files in the 25 years since the inception of the Boy Scouts “with about about 1,000 men having sexually abused Scouts. *Id.*

The IV Files were secret and the contents of the IV Files was carefully guarded. In the IV File for Minnesota Scout Leader Malcolm McConahy, there are letters that illustrate how the secret IV Files were guarded. On August 24, 1966, a man named Richard Roloff contacted the BSA because Malcolm McConahy had made an application with his company and on that application McConahy indicated that he had been involved with the BSA. (See August 24, 1966 Letter, Ex. 49, Noaker 3d Aff.) In response, Howard Boyd, Director of Registration for the BSA, wrote “This office does not keep records of individual Scout leaders and so we are unable to provide you with ‘a transcript of his Scouting records’ as per your request.” (See. August 30, 1966 Letter, Ex. 49,

Noaker 3d Aff.) This was an absolute lie as the BSA had created and maintained an IV File for McConahy since July 1965 because McConahy had sexually abused Scouts in his Troop. Mr. Boyd then recommended that Mr. Roloff contact the Scout Executive for the Viking Council. *Id.* On August 31, 1966, Howard Boyd sent a letter to the Scout Executive for the Viking Council stating “As you know, we never provide any information concerning individuals on whom we have confidential material such as you provided us in July, 1965 concerning McConahy, so we were unable to comply with Mr. Roloff’s request. (See August 31, 1966 Letter, Ex. 49, Noaker 3d Aff.) We did the only thing we could do in a case of this type and that is to refer him to you and I leave it to your good judgment to, orally **but not in writing**, tell Mr. Roloff the minimal information you might safely pass on to him.” (*Id.*) (Emphasis added.)

Nothing changed through 1991. Even in the case of sexual abuse, BSA did not share information with law enforcement. (Noaker 3d Aff. Ex. 48 - Paul Ernst Dep. at 46:7 – 21.) BSA did not share information with the local troop committee. (*Id.* at 46:22 – 47:4.) BSA did not share information with the parents of Scouts in the Troop. (*Id.* 47:5 - 11.) They simply did not share the IV File information with anyone. (*Id.* at 48:17 – 20.) This remained the policy of the BSA through 1991. (*Id.* at 49:25 - 75:17.)

F. Significance of the IV Files

According to Expert Gary Schoener, the IV Files are significant to the current matter because:

The BSA had considerable special knowledge concerning the potential for sexual abuse of youth based on the storehouse of knowledge contained in its IV files (which in 1967 had been maintained for roughly fifty years). No other entity is known to have had this amount of case material concerning sexual abuse of young people in the United States. At present there has been no presentation in professional or lay literature of any body of knowledge about this topic that came close to rivaling the knowledge base provided to BSA by the IV files.

Id.

Based upon the information contained in the IV Files, Mr. Schoener opines that by 1967, the BSA could have and should have implemented child abuse prevention policies that required two adults to be present for all activities, forbidding one-on-one activities between Scout Leaders and Scouts as well as a number of other standards and protocols to protect Scouts. *Id.* at 10 - 11.

In addition, the IV Files revealed Scouting activities that were high-risk for sexual abuse and techniques used by sexual offenders to groom and ultimately sexually abuse Scouts. For instance, the following are examples of individual IV Files that existed prior to 1967 that reveal that poorly supervised camps and camping events were a very high risk for sexual abuse:

- **Irving W. Beck** (Minneapolis, Minnesota – 1966) Sexually abused Scouts on campout. (Ex. 15, Noaker 2d Aff.)
- **Robert James Sykes** (Marquette, Michigan – 1966) Admitted to sexually abusing Scouts on camping trip. (Ex. 16, Noaker 2d Aff.)
- **James W. Bartlett** (Minneapolis, Minnesota - 1961) Scout Executive for the Viking Council was terminated to sexually abusing Scouts while on campouts. (Ex. 17, Noaker 2d Aff.)
- **James Lee Shadle** (Iowa City, Iowa 1963) “we had several boys approach our Camp Director that Mr. Shadle was making approaches to them.” (Ex. 18, Noaker 2d Aff.)
- **Robert L. Hillard** (Newton, Kansas 1961) “The complaint indicated that Mr. Hillard and Mr. Welsh were engaging in acts of perversion with several of the boys in the Troop and that these acts were taking place regularly and during outings, camps, trips, and parties, all within the scouting program of this particular troop. . . . Our investigation further indicated that some ten boys were involved with Mr. Hillard . . . “(Ex. 19, Noaker 2d Aff.)
- **Alonzo E. Estes** (Evansville, Indiana – 1961) “. . . five statements were taken from members of one of the troops. In the statements, the boys said they had engaged in unnatural sexual activity with Estes on numerous occasions – in the basement of the church where the troop held its meetings, on camping and boating trips and in Estes’ home. The statements included names of 10 other boys allegedly involved in the incidents, police said.” (Ex. 20, Noaker 2d Aff.)
- **Freddy Burger Jr.** (Houston, Texas – 1961) “Recommended for Confidential File for the following reasons: For unnatural sex-acts with young boys. Subject has

admitted that such acts took place on several occasions with different boys while on overnight hikes and other occasions.” (Ex. 21, Noaker 2d Aff.)

- **Charles J. Grover** (Trenton, New Jersey – 1961) “In a meeting of the full Troop Committee held last Friday night, July 7, the father of one of the Scouts described how his son was molested by Mr. Grover, and how several other Scouts had confirmed that Grover took this boy into bed with him at a camporee, and molested him” (Ex. 22, Noaker 2d Aff.)
- **Neil E. Lawrence** (Janesville, Wisconsin – 1961) “Activity of one Neil Lawrence, 22 years of age, was revealed by a 14-year-old boy charged with indecent exposure. He implicated several other boys and Mr. Lawrence. Much of the activity in question had taken place at the council camp during fall and winter months. (Ex. 23, Noaker 2d Aff.)
- **Michael Kendrick Boggess** (Batlimore, Maryland – 1961) Convicted sexual offender sought out Boy Scout Troop so he could get access to Scouts on camping trips. (Ex. 24, Noaker 2d Aff.)
- **Samuel Barry Halpern** (New York, New York – 1961) District Executive of the Manhattan Council was terminated after sexually abusing a number of Scouts on a Scout camping trip. (Ex. 25, Noaker 2d Aff.)
- **William K. Steuart** (Cleveland, Ohio – 1961) Scout Leader sexually abused Scout while in cabin on Scout camping trip. (Ex. 26, Noaker 2d Aff.)
- **Neil Francis Stensland** (Seattle, Washington 1961) Scout Leader arrested after five Boy Scouts walked away from a Scout Camp and gave statements to the police. (Ex. 27, Noaker 2d Aff.)
- **Charles Philip Thompson** (Silver Spring, Maryland – 1962) Arrested by FBI on charges of sodomy and committing perverted sex acts with young boys at a summer camp. (Ex. 28, Noaker 2d Aff.)
- **Paul Marshall Nathan** (Framingham, Massachusetts – 1962) Convicted of seven counts of improper sexual contact with Scouts on a camping trip. (Ex. 29, Noaker 2d Aff.)
- **Kenneth Leon Clark** (Frankfort, Germany 1962) “Mr. Clark did while Scoutmaster of Troop 95, Transatlantic Council, on camping trips, take certain immoral, improper and indecent liberties with certain members of the unit and performed certain lewd and lascivious [sic] acts upon and with the bodies of certain children.” (Ex. 30, Noaker 2d Aff.)
- **Richard Arlie Hurt** (Santa Ana, California – 1962) “At least seven of the boys in Troop 157 were victims of Mr. Hurt’s immoral conduct and part of the offenses occurred at Camp Myford.” (Ex. 31, Noaker 2d Aff.)
- **Robert Elmer Huelsman** (Cincinnati, Ohio – 1962) Sexually abused a 15-year-old on a weekend Scouting trip. (Ex. 32, Noaker 2d Aff.)

- **Jack J. Talamo** (New Brunswick, New Jersey – 1962) On camp staff at Camp 12 Pines when he sexually abused a Scout who was camping there. (Ex. 33, Noaker 2d Aff.)
- **Charles S. McCalment** (Washington, D.C. – 1964) Terminated from Boy Scouts for sexually abusing a Scout in his Troop on a camping trip. (Ex. 34, Noaker 2d Aff.)
- **T. Franklin Lawrence** (Baltimore, Maryland – 1965) Sexually abused Scouts while on camping trip. (Ex. 35, Noaker 2d Aff.)

The following individual IV Files are examples that reveal that it was common for sexual abusers to use alcohol and pornography to manipulate Scouts into circumstances where the abuser could abuse:

- **Lawrence Arthur Knippel** (Wausau, Wisconsin - 1961) “His method of operation is to pick up young boys and show them obscene literature in an effort to arouse them sexually and he then attempts to masturbate them.” (Ex. 36, Noaker 2d Aff.)
- **Richard D. Gates** (Worcester, Massachusetts - 1961) “He has been confronted with charges of homosexual activity with older boys in the Lodge, the serving of alcoholic beverages to certain of them in conjunction with the above, and showing of pornographic visual aids (movies) to minors.” (Ex. 37, Noaker 2d Aff.)
- **William R. Pratt** (Toms River, New Jersey – 1961) Pratt was Troop Leader who grabbed privates of several Scouts who used purchased beer and pornography on the way to Troop camping trips. (Ex. 38, Noaker 2d Aff.)
- **Alva D. Linder** (Plattsmouth, Nebraska – 1962) Provided alcohol to minor and sexually abused him. (Ex. 39, Noaker 2d Aff.)
- **Robert L. Wantuk** (St. Louis, Missouri – 1963) Terminated from Scouting for providing liquor and sexually abusing members of his Troop. (Ex. 40, Noaker 2d Aff.)
- **Chalma Lee Walker** (Littlefield, Texas 1965) “This man has confessed to all charges which include, sodomy, distribution of pornographic literature and other acts of perversion.” (Ex. 41, Noaker 2d Aff.)
- **Tommy Fletcher Young, Jr.** (West Monroe, Louisiana 1965) Young provided beer, vodka and gin to Scouts on Scout outings and showed pornography to “arouse his passion and sex drives.” (Ex. 42, Noaker 2d Aff.)

Despite having this wealth of information, the IV files show not a single example of meaningful oversight or surveillance by the BSA. (Noaker 2d Aff., Ex. 14, Schoener Report at p.

5.) This leads Mr. Schoener to opine that:

(14) In this case had such a prevention program been in place it is likely that the abuse by Mr. Momont would not have taken place or been reported earlier because the plaintiff and others would have identified it as abuse.

(15) In this case the plaintiff claims to have made a report to a scout official back in the early 1970's. The absence of a program would likely have led to no action being taken, but if an IV file was created it might well have been destroyed.

(16) Finally, had there been a prevention program in place at the time, Mr. Momont might well have found that the Boy Scouts of America programs were too dangerous for him to engage in predatory actions of the sort he did with the plaintiff.

Id. at pp. 11-12.

LAW AND ARGUMENT

1. Punitive Damages Procedure

Procedurally, a plaintiff may not seek punitive damages upon commencement of a case.

According to Minn. Stat. § 549.191:

Upon commencement of a civil action, the complaint must not seek punitive damages. After filing the suit a party may make a motion to amend the pleadings to claim punitive damages. The motion must allege the applicable legal basis under [section 549.20](#) or other law for awarding punitive damages in the action and must be accompanied by one or more affidavits showing the factual basis for the claim. At the hearing on the motion, if the court finds prima facie evidence in support of the motion, the court shall grant the moving party permission to amend the pleadings to claim punitive damages. For purposes of tolling the statute of limitations, pleadings amended under this section relate back to the time the action was commenced.

“A plaintiff need not demonstrate an entitlement to punitive damages *per se*, but only an entitlement to allege such damages.” *Freeland v. Fin. Recovery Servs., Inc.*, 790 F. Supp. 2d 991, 994 (D. Minn. 2011) citing *Berczyk v. Emerson Tool Co.*, 291 F.Supp.2d 1004, 1008 (D.Minn.2003). Under Minnesota law, “ ‘prima facie’ does not refer to a quantum of evidence”; rather, “prima facie evidence is that evidence which, if unrebutted, would support a judgment in that party's favor.” *Freeland*, 790 F. Supp. 2d at 994, citing *Olson v. Snap Prods., Inc.*, 29 F.Supp.2d 1027, 1034 D. Minn. 1998) (quotations omitted). In determining whether a party has

made a prima facie showing, the Court does not make any credibility determinations or consider challenges to the moving party's evidence. *Id.*

2. Punitive Damages Standard

In Minnesota, a party may seek punitive damages if he produces evidence that a defendant showed deliberate disregard for the rights or safety of others. Specifically, Minn. Stat. § 549.20, subd. 1 states:

(a) **Punitive damages** shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.

(b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

In *Kruszka v. Novartis Pharmaceuticals Corp*, 19 F.Supp.3d 875 (D.Minn. 2014), District Court Judge Donovan Frank considered punitive damages in a lawsuit involving the drug Aredia and Novartis' failure to warn about the possibility that the drug could cause osteonecrosis of the jaw ("ONJ" or dead jaw bone). Judge Frank ruled that plaintiff could proceed in seeking punitive damages even though the first case report connecting Aredia to ONJ was not published until after the Plaintiff had taken the drug. *Id.* at 894. Specifically, Judge Frank concluded:

Plaintiffs point to a long list of evidence that, if true, could lead a reasonable jury to find that Defendant had acted with the requisite disregard for the safety of patients taking Aredia. For example, Plaintiffs present evidence of a number of instances that Defendant was made aware of concerns that bisphosphonates caused ONJ prior to the time that labels and information to doctors communicated that information. Plaintiffs also point to evidence that Defendant was aware doctors had seen patients with ONJ and were concerned about a link to bisphosphonates. The fact that some of the evidence to which Plaintiffs point was from after 2002 does not change this result; a document's weight is to be determined by the jury.

Id. at. 898. (Citations omitted.)

In the current matter, the BSA acted with deliberate disregard for the safety of others, including Plaintiff, when BSA intentionally disregarded the information contained in its centralized IV Files showing that pedophiles had infiltrated BSA's troop leadership positions and that those pedophiles often isolated their victims on camping trips and used alcohol, drugs and pornography to groom and ultimately sexually abuse. Nowhere is that more clear than in the Viking Council (merged with Indianhead to form NSC) here in Minnesota.

In fact, there is clear evidence that a pedophile actually ran the Viking Council prior to 1961. In 1961, it was discovered that James W. Bartlett, the Scout Executive for the Viking Council, which is the chief executive for the Council, resigned after reports of him sexually abusing Scouts while at a camp. (Noaker 2d Aff., Ex. 9, Article VI, Section 6, Ex. 17.) The reports of abuse were communicated by the Viking Council to the BSA. (Noaker 2d Aff., Ex. 17.) As a result of the reports, BSA created an IV File for Bartlett on September 19, 1961. *Id.* This discovery is especially chilling because, the Scout Executive is responsible for handling issues of sexual abuse of Scouts by Scout Leaders within the Council.

Similarly, in 1966, Irving W. Beck resigned as the Scoutmaster for Troop 115 of the Viking Council after multiple Scouts reported that Beck had sexually abused them. This information was communicated to the BSA by the (new) Scout Executive of the Viking Council in a letter dated June 9, 1966. (See June 9, 1966 Letter, Ex. 15, Noaker 2d Aff.) On July 19, 1966, BSA created an IV File. (Ex. 15, Noaker 2d Aff.)

Likewise, in 1965, Malcolm Willis McConahy, Assistant Scoutmaster for Troop 27 of the Viking Council, was suspended as the Assistant Scoutmaster due to "evidence obtained and an admission by Mr. McConahy of homosexual interests and activities involving certain boys within Troop 27 and himself." (See June 4, 1965 Letter, Ex. 49, Noaker 3d Aff.) This information was

communicated to the BSA by the Scout Executive of the Viking Council in a letter dated July 21, 1965. (See July 21, 1965 Letter, Ex. 49, Noaker 3d Aff.) In a letter dated July 9, 1965, the District Executive for the Viking Council forwarded “a letter from the Scouters from Plymouth Congregational Church attesting to the homosexual interests of Malcolm McConahy.” (See July 9, 1965 Letter, Ex. 49, Noaker 3d Aff.) This letter indicated that a copy of the letter and attachment were placed in the “District Files.” *Id.* As a result of the report, BSA created an IV File for McConahy on July 26, 1965. (Noaker 3d Aff. Ex. 49.)

Unfortunately, the McConahy story does not end there. On July 28, 1965, the District Scout Executive wrote to the Viking Council Scout Executive and informed him: “. . . I learned that Malcolm McConahy had been arrested within the past couple of days in Wisconsin Rapids, Wisconsin. This was on misdemeanor charge of circulation of pornographic material. He was in the company of four boys from Wisconsin Rapids at the time of his arrest. He had given sums of money to all four boys, varying from sixty to ten dollars.” (July 28, 1965 Letter, Ex. 49, Noaker 3d Aff.) As this letter was produced by the BSA as part of the IV File for McConahy, it is reasonable to conclude that this letter was forwarded to the BSA at some point.

On August 24, 1966, a man named Richard Roloff contacted the BSA because Malcolm McConahy had made an application with his company. (See August 24, 1966 Letter, Ex. 49, Noaker 3d Aff.) In response, Howard Boyd, Director of Registration for the BSA, wrote: “This office does not keep records of individual Scout leaders and so we are unable to provide you with ‘a transcript of his Scouting records’ as per your request.” (See. August 30, 1966 Letter, Ex. 49, Noaker 3d Aff.) This was an absolute lie as the BSA had created and maintained an IV File for McConahy since July 1965. Mr. Boyd then recommended that Mr. Roloff contact the Scout Executive for the Viking Council. *Id.* On August 31, 1966, Howard Boyd sent a letter to the Scout

Executive for the Viking Council stating “As you know, we never provide any information concerning individuals on whom we have confidential material such as you provided us in July, 1965 concerning McConahy, so we were unable to comply with Mr. Roloff’s request. (See August 31, 1966 Letter, Ex. 49, Noaker 3d Aff.) We did the only thing we could do in a case of this type and that is to refer him to you and I leave it to your good judgment to, orally **but not in writing**, tell Mr. Roloff the minimal information you might safely pass on to him.” (*Id.*) (Emphasis added.)

The above examples of information contained in the IV files are just the tip of the iceberg. Other IV Files created prior to 1967 illustrate how pedophiles had infiltrated BSA’s troop leadership positions and that those pedophiles often isolated their victims on camping trips and used alcohol, drugs and pornography to groom and ultimately sexually abuse. (See IV Files of Robert James Sykes, James Lee Shadle, Robert L. Hillard, Alonzo E. Estes, Freddy Burger Jr., Charles J. Grover, Neil E. Lawrence, Michael Kendrick Boggess, Samuel Barry Halpern, William K. Steuart, Neil Francis Stensland, Charles Philip Thompson, Paul Marshall Nathan, Kenneth Leon Clark, Richard Arlie Hurt, Robert Elmer Huelsman, Jack J. Talamo, Charles S. McCalment, T. Franklin Lawrence, Lawrence Arthur Knippel, Richard D. Gates, William R. Pratt, Alva D. Linder, Robert L. Wantuk, Chalma Lee Walker, Tommy Fletcher Young, Jr. above.)

Based upon the information contained in the IV Files, prior to 1967 the BSA should have implemented child abuse prevention policies that required two adults to be present for all activities, forbidding one-on-one activities between Scout Leaders and Scouts as well as a number of other standards and protocols to protect Scouts. (Noaker 2d Aff., Ex. 14 - Preliminary Expert Report of Gary Schoener Report, at pp. 10 - 11.) As evidenced by the above IV Files, this was especially true for Boy Scout camping activities.

Instead of implementing these child safety policies, which would have revealed what the BSA and NSC knew about pedophile Scout Leaders, BSA and NSC chose to keep this information secret. (See Exs. 48 and 49, Noaker 3d Aff.) It is reasonable to conclude that BSA and NSC were concerned that participation in BSA programs would suffer if the public knew how many Scout Leaders had sexually abused Scouts. This would have a direct impact upon revenues because the lion's share of the BSA annual budget was based upon registration fees and uniform/supply sales.

The chief source of revenue for the BSA comes from the collection of registration fees and supply sales. (James J. Terry Dep., 27:25 - 28:3, March 11, 2011, attached as Ex. 11 to Noaker 2d Aff. (hereafter Terry II Dep.)) The national registration fees in 1968 were \$2 for adults and \$1 for boys. (1968 – 59th Report to Congress of the Boy Scouts of America attached as Ex. 10, pp. 215, Noaker 2d Aff.) These membership fees are collected directly from the Scouts by passing through the local council, which holds the funds in escrow for the national organization. (Terry II Dep., 29:20 - 23; Andrews Dep., 63:14 - 15.) In 1968, total budget for the BSA was \$9,293,808. (Noaker 2d Aff., Ex. 10, pp. 215 - 216.) Revenue to the Boy Scouts of America for registration fees was \$2,801,746 and revenue from supply sales was \$4,608,832. (*Id.*) If boys do not participate in Scouts, they do not pay registration fees or buy uniforms/supplies. Thus, the BSA chose revenue over child safety.

Moreover, the BSA went even farther than withholding information from Scouts and their parents, the BSA affirmatively communicated misinformation about the safety of Scoutmasters. Instead of establishing a prevention program or warning Scouts and parents about what the BSA and NSC (Viking Council) knew about pedophile Scout Leaders, the BSA and NSC consistently communicated that Scoutmasters were trustworthy and safe. For example, the 1968 Boy Scout Handbook states the following about the Scoutmaster:

What a wonderful man he is! He spends hours figuring out how to give you fun and adventure in your troop. He takes special training to learn exciting new things for you to do. He is present at every troop meeting and goes hiking and camping with the troop. He is a friend to whom you can always turn for advice.

(Id. at p. 94.)

Give your Scoutmaster and the other troop leaders your 100 percent cooperation. They plan and work to help you grow into strong manhood.

(Id. at p. 108.)

BSA made these representations to Plaintiff despite knowing that there had been thousands of Scout Leaders who had sexually abused Scouts under their supervision.

Sadly, had the BSA and NSC implemented child protection policies instead of protecting revenues, the Plaintiff would in all likelihood have been spared the sexual abuse by Andy Momont.

According to Gary Schoener:

(14) That in this case had such a prevention program been in place it is likely that the abuse by Mr. Momont would not have taken place or been reported earlier because the plaintiff and others would have identified it as abuse.

(15) In this case the plaintiff claims to have made a report to a scout official back in the early 1970's. The absence of a program would likely have led to no action being taken, but if an IV file was created it might well have been destroyed.

(16) Finally, had there been a prevention program in place at the time, Mr. Momont might well have found that the Boy Scouts of America programs were too dangerous for him to engage in predatory actions of the sort he did with the plaintiff.

Id. at pp. 11 - 12.

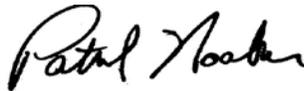
This is substantial prima facie evidence that the BSA and NSC (Viking Council) acted with deliberate disregard for the rights or safety of others because they had knowledge of facts or intentionally disregarded information contained in the IV Files creating a high probability of injury to the rights or safety of others. Therefore, Plaintiff should be given leave to amend his Complaint to include punitive damages against BSA and NSC.

CONCLUSION

The BSA and NSC acted with deliberate disregard for the safety of others, including Plaintiff, when they intentionally disregarded the information contained in its centralized IV Files showing that pedophiles had infiltrated BSA's troop leadership positions and that those pedophiles often isolated their victims on camping trips and used alcohol, drugs and pornography to groom and ultimately sexually abuse. As a result, BSA and NSC failed to implement child abuse prevention policies that required two adults to be present for all activities (especially camping), forbidding one-on-one activities between Scout Leaders and Scouts as well as a number of other standards and protocols to protect Scouts. Instead, the BSA and NSC chose to keep the thousands of IV Files secret from the public and law enforcement, leaving Scouts, including Plaintiff, vulnerable to sexual abuse by pedophile Scout Leaders. Consequently, Plaintiff should be allowed to amend his Complaint to seek punitive damages.

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