

SCOUTS-L

BSA LITIGATION

Date: Sun, 17 Nov 1996 19:15:15 -0700
From: "James H. Moss" <JHMoss@LAWYERNET.COM>
Subject: Litigation against volunteer youth leaders
To: Multiple recipients of list SCOUTS-L <SCOUTS-L@TCUBVM.IS.TCU.EDU>

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Re: Litigation in Scouting and other organizations
Dear Scouts:

I am an Eagle Scout and now an Attorney. I am the son of an Eagle, brother of an Eagle and son of two Silver Beavers. I am a Vigil member of the OA and currently serve as Associate Advisor to Post 2712 in Denver Colorado. I am currently half way through the research and writing of a book on lawsuits against volunteer youth leaders. I put in the BSA background not wanting you to think I am writing a book on how to sue. The book should help you stop possible lawsuits. (In case you are wondering there is a published paper in the American Law Reports on how to sue youth organizations.)

I have done some fairly extensive research on the cases, however, that research does not include cases that were settled or ones that went to trial but never appealed.

I am looking for information on any action by a youth against a youth leader or the organization for any reasons except sexual. I am also not interested in lawsuits to gain admittance to an organization unless you believe the relationship between the youth leader and the parent was the reason for the action. I would like to know the names of the parties, the general facts giving rise to the claims, the location of the action and what the outcome was. If I can get information what the national organization did and what the relationship was between the leader and the youth's parents that would be even more helpful. If the case is still ongoing, I would like to be contacted in advance so that I do not mess any current actions.

I am also interested in accidents to youth that resulted in an injury or death that did not result in litigation. I would like the same information on these cases as well.

My research to date is quite interesting on why youth and parents sue an

adult leader or a national organization. Most of the time it is a quite simple due to the relationship between the parents and the leader. Cases from attendance a Jamboree's or High Adventure Bases do not fall within the same parameters, however, my resources there are still small.

Thanks in advance for any help that you can provide.

Yours in Scouting,

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On Wednesday we learned from a series of postings that the Boy Scouts of America is being sued for \$42 million as a result of allegations of sexual abuse at a New York Camp. The primary information came from the news media's web pages with a bit of commentary from Brian, who apparently worked at the camp where the lawsuit originated. This in turn generated a number of comments expressing feelings and opinions about this matter, which understandable given what we heard. However, the expression of feelings and opinion on the net regarding this matter is potentially dangerous.

Let me speak to you for a few moments, not so much as a Scouter, but as an experienced defense trial attorney.

In recent years with the growth of the Internet, trial attorneys have been fairly quick to see discussion and usenet groups as potentially rich and fertile areas for discovering information that can be used to help win cases against a defendant. Typically, a trial attorney will try to find out what areas of the net have discussions about the subject of a lawsuit and then will subpoena the listowner or the discussion moderator(s) to produce all of the logs and records of those discussions for examination.

The trial attorney will then look for:

- * Opinions as to what the standard of care should have been.
- * Clues as to what rules existed in an organization.
- * Information about who might have been involved or who might be a good witness in the case.

- * Sources of other written information about the case.
- * The degree of outrage an act provoked as a way of reinforcing the attorney's conception of what standard of care should have existed (but which did not exist until the attorney made it up).

Once satisfied that this resource has been adequately farmed, the trial attorney will often subpoena some of the posters to get them to testify at length about their feelings and opinions. Sure the defending lawyer will object and the disputed matters will be heard by a judge, who being a human probably will be affected by what he/she hears. And of course most juries are pretty good at sensing how a judge feels about a case. So it is really a no-win situation at that point.

Last year a trial attorney tried to do just this in a lawsuit against the BSA. Fortunately the trial court was not too impressed and the lawyer had not scooped up all the available information from discussion groups - he missed Scouts-L.

The next time or this time the lawyers may be smarter and may take a look at Scouts-L. Anyone who has posted a message on the issue is then is regarded as a potential witness and could end up with a subpoena to testify at a deposition, where the rules are pretty lax about what can and cannot be discussed. The attorney will try to get the witness to give opinion and express feelings and to learn any useful information that may be there.

For example the deposing attorney will try to establish what standard of care was owed by the camp and the leaders towards the Scout. You've all been camping with Scouts and know that it is a tough job and that you can't be everywhere at once watching each Scout every minute. This won't matter, the attorney will try to get folks to say stuff that will give the impression that there is an absolute standard requiring perfection far beyond what we would think of as a reasonable, a standard which if real would mean that none of us could ever sleep, that every Scout would have to be watched every minute and that every danger or bad thing would have to be anticipated in advance - a standard that if applied to you would be impossible to fulfill and would make each of us more and more vulnerable to more of these lawsuits.

Of course the next step for the attorney will be to try to use the opinion and information to make his/her case. If it works and BSA loses and is ordered to pay damages - about 40% of which end up in the lawyer's pocket (these cases are usually handled with a contingency arrangement and not an hourly fee), the lawyer wins and Scouts in the movement end up being the real losers. In this case the lawyer would end up being a

millionaire 16 times over. BSA could be forced to cover the cost and Scouts would pay by losing programs that couldn't be funded.

Not very pretty. But this is the reality of litigation. As a result, I would ask that each of you as responsible Scouters refrain from engaging in further discussion of the lawsuit. Discussion here will not change whatever happened, won't necessarily cause any positive changes, and certainly sets up some risks for the organization we are a part of.

We do not have first hand knowledge of the facts in the case. We have no way of knowing all the details of what happened, which are probably hotly disputed. And we may also want to put ourselves in the shoes of the leaders who were asleep on that night. Its kind of hard to do because we don't know what their circumstances where or what had happened up to that point, nor do we know the circumstances that allowed the composition of the group. All we can do is speculate or form opinions and ones that could potentially have adverse effects on the resolution of this case.

Please, act let's act responsibly under these circumstances and refrain from further discussion allowing this thread to die a quick death. After all who wants to enrich the lawyers with such a windfall in the case. The only winners in a case like this are the lawyers, who get enriched at everyone else's expense.