



FRATERNAL LAW™

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The State Of Michigan And The City Of Ypsilanti Brought Suit Against A Fraternity, Alleging It To Be A Public Nuisance

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On January 5, 2022, the prosecutor of Washtenaw County, Michigan, on behalf of the State of Michigan, and the City of Ypsilanti, jointly sued Theta Xi Chapter of Delta Tau Delta at Eastern Michigan University. The 25- page, 102 paragraph Complaint alleges that the Chapter has created a public nuisance. It argues that the Chapter has maintained “an environment conducive to sexual assaults through the excessive consumption of alcohol and illegal underage drinking at fraternity parties.”

The Complaint provides summary descriptions of some 18 alleged sexual assaults over a period dating back to late 2014. The lawsuit fails to indicate whether or not there have been any criminal charges or convictions related to any of these alleged assaults, only one of which is alleged to have occurred in the last 3 ½ years. Though, there are reports on www.mlive.com, that “[s]ix people are currently facing criminal charges in connection with activities of the fraternity, said Washtenaw County Prosecutor, Eli Savit, who has spearheaded the effort to use state and local public nuisance laws against the fraternity.”

Savit is quoted as saying, “We are really looking for a way of course, not just to prosecute the people involved in these cases, but also to be proactive and address the conditions that are leading to these sexual assaults in the first place.”

The lawsuit repeatedly makes the point that the underage and excessive consumption of alcohol by guests at fraternity parties create a dangerous environment contributing to the possibility of sexual assault.

The overwhelming majority of the alleged instances of sexual assault are identified as occurring on Chapter controlled property.

In reviewing each of the instances of alleged sexual assault, the Complaint, in many cases, claims that the sexual assault occurred in plain sight of other fraternity members “who did nothing to intervene”.

Repeating often cited statistics, the Complaint points out that College-age women – females 18-24 – are more than three times (3x) more likely to experience sexual assault than women in other age brackets and that only 20% of sexual assaults are actually reported. Those that are, are frequently reported after a substantial delay.

Of course, the alleged facts in the complaint, as with any complaint, remain to be proven in court. But unlike in a criminal case where proof of guilt must be beyond a reasonable doubt, here the proof required is to the lesser standard of by a preponderance of the evidence.

The Complaint relies on both the Ypsilanti Code of Ordinances, which defines a public nuisance as “whatever annoys, injures or endangers the safety, health, comfort or repose of the public; offends public decency . . .or in any way renders the public insecure in life or property.”¹ Michigan State law declares a property to be a nuisance if it is “used for the unlawful. . .

¹ Ypsilanti Ordinances Section 42-32

furnishing of vinous, malt, brewed, fermented, spirituous or intoxicating liquors or mixed liquors or beverages, any part of which is intoxicating.”²

Under those statutes, the Plaintiffs could have tried to shut down the Chapter entirely. However, they did not. Instead, the Complaint asks for very specific relief including:

- No social gatherings “at the Frat House, any ‘Frat Annex’ location or any other proxy location until further order of the court”.
- All members of the Chapter must complete a “state-approved alcohol service training program” within 3 months and continue such training into the future.
- Provide proof of such training.
- All members of the Chapter must also attend sexual assault awareness and prevention education as well as bystander training.
- “Permanently maintain the Frat House without nuisance conditions including by prohibiting underage drinking at the Frat House”, and “Posting Eastern Michigan University’s Title IX Office contact information in a highly visible location in each common area of the Frat House.”
- Finally, “award Plaintiff actual damages, interest, penalties, costs, attorneys’ fees, expert-witness fees and other monetary relief.”

The nuisance action filed by the prosecutor and City attorneys appears to be a matter of first impression. There are examples of neighbors bringing nuisance actions against chapters related to noise, trash, and similar matters. But Fraternal Law is unaware of any similar action brought by government attorneys. If this case is successful, others may use the same tactic.

² MCL 600.3801

Sexual assault is and always has been entirely unacceptable in and beyond the Greek world. National and international fraternal organizations recognize that and seek to address and eliminate sexual assault. Many already have in place the kind of training sought in the lawsuit. The challenge for both those in the position of the plaintiffs and National and International groups and their chapters is to identify and hold accountable those misguided individuals who refuse to recognize that sexual assault is illegal.

Fraternity Sued for Negligence Following Death Caused by Drug Overdose

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On the morning of January 17, 2020, Eitan Weiner, 19 years old, was found dead in a bathroom stall in the Theta Delta Chi house at Stanford University. Last month, his parents, dad a faculty member and mom Associate Vice President of the medical center at Stanford, filed suit against the University, the Theta Delta Chi Founder's Corporation, and four individuals, three of whom were members of the chapter at the time of Eitan's death.¹

The allegations of the complaint are that Eitan and three of the individual defendants arranged to purchase illegal drugs from the fourth individual defendant, a drug dealer who was not associated with the Fraternity, and to have the drugs mailed to them at the chapter house. Eitan is alleged to have overdosed on those drugs on January 15, 2020. By the time first responders arrived following a 911 call, he had recovered and declined further

¹ Weiner et al v. Leland Stanford Junior University et al, Superior Court of the State of California for Santa Clara County, Case No. 21CV391881

treatment. According to the complaint Eitan “died of Fentanyl toxicity and blunt force trauma to his head” two days later.

The cause of action against the university is that its negligence was the cause of Eitan’s wrongful death. The Plaintiffs brought a similar cause of action against the Fraternity. There is no claim that Eitan’s death had anything to do with hazing or the programs of the Fraternity. The basic theme of the complaint is that “A Culture of Drug and Alcohol Abuse has Infected Stanford’s Campus” and there was history of “Alcohol and Drug Abuse at Theta Delta Chi Fraternity”. The complaint notes the Fraternity had a clear policy prohibiting illegal drugs in the chapter. In spite of this, Plaintiffs claim that the Fraternity did nothing to ensure compliance with that rule, even after Eitan’s initial overdose at the chapter. The complaint also claims the Fraternity failed to notify the University about the presence of drugs following that initial overdose...even though the complaint acknowledges that the Fraternity’s Resident Assistant, who was both a member of the Fraternity and an employee of the University, reported the situation to his supervisor, the University’s Resident Dean, upon learning of Eitan’s condition.

As with so many drug overdose deaths, especially those in the nationwide Fentanyl epidemic, this is a tragic case. But there is a critical element of individual responsibility that complaints like this one fail to recognize. Eitan, along with the three defendants in the suit who lived with him in the house, decided to purchase drugs (using bitcoin) that they knew to be illegal. They also chose to ship the drugs to the fraternity house in knowing violation of the rules of the Fraternity. Ultimately, it was Eitan who made the decision to ingest the drugs.

Obviously, this matter is in its very early stages. It remains to be seen what Plaintiffs will actually be able to prove, and if there is enough to convince a jury that either the University or

the Fraternity actions or inactions rose to the level of negligence responsible for this young man's death.

Supreme Court to Hear Case That Could Impact Diversity, Equity, and Inclusion Efforts On College Campuses Throughout the Country

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On January 24, 2022, the Supreme Court of the United States granted certiorari, and will hear the Students For Fair Admissions' appeal in their challenge to race-conscious admission policies at Harvard University and at the University of North Carolina. The Students For Fair Admissions first sued Harvard University in 2014, claiming the school's use of race as a factor in granting admission penalizes and discriminates against Asian American applicants on the basis of race. While their claim has so far been unsuccessful, the Students for Fair Admissions now request the Supreme Court completely eliminate the consideration of race in the university admissions processes..

This is not the first time the Supreme Court has heard challenges to race-based affirmative action in higher education. In *Grutter v. Bollinger* (2003), a prospective student of the University of Michigan Law School claimed that her rejection was due to the unconstitutional use of race in the University's admissions decisions. The Supreme Court ultimately held that creating student body diversity in higher education institutions is a compelling government interest and justifies

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the use of race in the universities' admissions process. The Court went on to reiterate the necessity that the use of race be narrowly tailored to achieving this government interest, which requires a good faith consideration of alternate, race-neutral methods.

Building upon *Grutter*, the Supreme Court also heard *Gratz v. Bollinger* in 2003. In *Gratz*, a University of Michigan undergraduate student challenged the University's automatic grant of "points" to individuals with certain traits, such as those who were member to a minority group, attended a predominantly minority high school, or were recruited as athletes, among others. The Supreme Court ultimately held this to be an unconstitutional practice of affirmative action, as the allocation of "points" based on race made race *the* factor, not just a factor of a factor. The University's policy ultimately failed to consider applicants as individuals and consequentially failed the requirements to be considered narrowly tailored to achieving student body diversity.

The 2003 *Grutter* majority opinion states "[t]he Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." While there is now a wide body of precedent to support the use of narrowly tailored race-conscious admissions decisions, it is entirely possible that the Supreme Court will overturn this precedent. A ruling for the Students For Fair Admissions' challenge would not only affect the admissions process of universities across the nation, but would also impact the diversity, equity, and inclusion efforts of sororities, fraternities, and clubs across campuses nationwide. *Fraternal Law* will monitor this case as it progresses.

Foltz Family Dismisses All Claims Against Pi Kappa Alpha

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Here in *Fraternal Law*, we have previously reported a couple of different times about the civil lawsuit and criminal charges that arose from the tragic hazing death of Stone Foltz, a former student at Bowling Green State University. Now there is one additional important development to share. While the civil litigation remains underway, the Estate of Stone Foltz as the Plaintiff arrived at a mutually agreeable resolution to the case with the Pi Kappa Alpha International Fraternity, the Delta Beta Chapter of Pi Kappa Alpha, and with the Chapter's volunteer advisor. As a result, the Plaintiff dismissed all of its claims against those three parties on December 9, 2021. The civil lawsuit remains in a relatively early stage with new individual defendants added to the case recently. While there will no longer be claims by the Plaintiff against any of the aforementioned parties, we will continue to report on how the litigation against the remaining individual defendants unfolds.

The goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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