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Appellate Court Upholds Dismissal of Fraternal Defendants

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In July, a California Court of Appeals[1] upheld the trial Court's dismissal of a lawsuit against Alpha Epsilon Pi ("AEPi"), the national fraternity, the AEPi Foundation, the AEPi chapter at UCLA, and the local house corporation. The lawsuit grew out of an incident at the chapter house when a member of the chapter, Gideon Wolder, hosted his own birthday party and allowed several minors, including the Plaintiff, Justin Steagall, to join the party. During that party, a fight broke out in which Steagall was assaulted, allegedly by Mikey Leiderman. Leiderman was not a member of the fraternity, and not a party to the lawsuit.

What is particularly interesting about the decision is how careful the Court was in examining and differentiating the roles of the four fraternity-related entities.

From a legal standpoint, the critical issue in this case was California's social host liability law, which provides, in part, that "no social host who furnishes alcoholic beverages to any person, may be held legally accountable for damages suffered by that person or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages."[2] The law contains an exception making any parent, guardian, or another adult who, at his or her

[1] Steagall v. Alpha Epsilon Pi Foundation, Inc., No. B308076, 2022 WL 2900455 (Cal. Ct. App. July 22, 2022). It must be noted that the decision is not to be published in the official reports and pursuant to California rule, courts and parties are prohibited from citing or relying on opinions which are not certified for publication.
[2] Cal. Civ. Code § 1714(c).

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residence, knowingly furnishes alcoholic beverages to a minor, subject to potential legal accountability. But as the Court of Appeals pointed out, none of the fraternity defendants fall under that exception, as they are not a parent, guardian, or natural person.

While the Plaintiff tried to convince the Court of Appeals that "adult" includes corporate entities, as the Court noted, the Plaintiff was unable to provide any legal authority for that argument.

Similarly, the Court rejected Plaintiff's claims of negligence and premises liability because "there is no general duty to act to protect others from a third party's conduct" in the absence of a special relationship existing between the Defendant and the victim or aggressor.[3] In determining whether such a special relationship exists, the Court noted that "the two most important considerations are foreseeability and the extent of the burden on the defendant, and in cases where the burden of preventing future harm is great, a high degree of foreseeability may be required."[4]

The Plaintiff struggled with those standards and the Court made short work of his argument:

> Steagall off-handedly asserts that it doesn't "take a rocket scientist to figure out that uncontrolled consumption of alcohol and drugs, in a party where a bunch of young men and women are drinking, getting high and partying, bad things such as violent attacks, fights, rapes, etc. are foreseeable." We agree: this was not a matter of rocket science; it was a matter of evidence. While we are not cavalier about the sentiment underlying Steagall's remark—that drinking and criminal behavior can occur at fraternity parties—there is no recognized special relationship between fraternity members who have been told not to engage in certain behaviors and partygoers that would permit imposing a greater or more burdensome duty on fraternity members solely because of their membership and training.[5]

[3] *Steagall*, 2022 WL 2900455 at *6.
[4] *Id.*
[5] *Id.* at *8.

Steagall attempted to pursue a claim for vicarious liability that would have made the fraternity defendants liable for the conduct of Wolder, the individual member who hosted his own birthday party in the house. Again, the Court was unimpressed with Plaintiff's argument. Unlike the Court's own careful analysis of the four (4) fraternity defendants' unique purposes, powers, and responsibilities, the Court simply held that "Steagall has not delineated how each individual fraternity defendant controlled Wolder or the UCLA chapter such that an agency relationship was created."[6]

In considering the potential for national fraternity liability, the Court relied on the prior California Court of Appeals decision, *Barenborg vs. Sigma Alpha Epsilon Fraternity*, 33 Cal.App.5th 70 (2019), which noted local chapters were "virtually independent" from national, had complete control over their own activity, and had no authority to act for or to bind the national fraternity. The Court found that the AEPi Fraternity was in the same position as Sigma Alpha Epsilon in the *Barenborg* case. As such, it had no responsibility for the acts of Wolder.

The Court separately analyzed the potential vicarious liability for each of the fraternity entities. The Court found that the Foundation's purpose was to promote the Fraternity's values through leadership development, partnership with Jewish organizations, and providing support. It did not issue charters, rules, or policies applicable to the chapter, and had no regular communication with or ability to discipline the chapter or its members. It had no supervisory responsibility.

Similarly, the House Corporation did not control or supervise the chapter and its members in its day-to-day activities and had nothing to do with planning Wolder's birthday party.

[6] *Id.* at *10.

The strongest potential claim for vicarious liability may have been against the UCLA chapter. Wolder was an officer of the chapter serving on its judicial board. According to the Court's decision, the chapter had even agreed that the potential for vicarious liability was there if: the chapter had authorized the commission of the tort or crime; Wolder had committed the tort or crime while performing a service on behalf of the chapter; or the chapter had ratified Wolder's conduct after the fact. None of those conditions were met and the Court accepted Wolder's explanation that the event was not a fraternity party; it was his own birthday party not sponsored by the chapter.

Perhaps the most important take-away from this decision is as it applies to the Fraternity's Foundation. More and more frequently, it appears that plaintiffs' counsels in other cases are naming fraternity foundations as a defendant. While those involved in the fraternity world may understand that fraternity foundations have no supervisory responsibility over chapters, it may be worth reviewing governing documents of fraternity foundations to make that crystal clear.[7]

[7] Michael Osborne of the Cokinos|Young firm led the defense of the fraternity entities in this case.

Stone Foltz Parents Sue Bowling Green State University

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Fraternal Law Partners has continued to report on the death of Stone Foltz, who tragically died after a Pi Kappa Alpha hazing ritual at Bowling Green State University's ("BGSU").

In June 2022, Foltz's parents, Shari and Cory, filed a separate lawsuit against BGSU in the Ohio Court of Claims. The Ohio Court of Claims only has one defendant—the State of Ohio, which includes state colleges and universities like BGSU—and hears claims against the State for money damages. The exact amount of damages Foltz's parents are seeking in this new suit is unknown, but they are seeking substantially more than the $25,000 jurisdictional minimum "to reflect the value of the loss of this young life."[2]

Foltz's parents bring two main claims against BGSU. First, they assert that BGSU violated Ohio's anti-hazing statute because "BGSU turned a blind eye to hazing within the Greek organizations on its campus."[3] Second, as part of a survival action, Stone's parents have set forth a wrongful death claim, stating Stone died as a result of "BGSU's gross recklessness, lax policies, lax enforcement of those policies, promotion of PIKE's Delta Beta Chapter, perfunctory 'investigations,' and willful inaction in the face of repeated warnings."[4]

This lawsuit is separate and distinct from the civil suit the family filed against the Pi Kappa Alpha Fraternity, the local chapter, and individual members of the fraternity.

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[2] Complaint at *26, *Foltz v. Bowling Green St. Univ.*, No. 2022-00498JD (Ohio C.P. June 23, 2022).
[3] *Id.* at *2.
[4] *Id.*

Final Sentences Issued in Hazing Death of Stone Foltz

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As reported in the June 2022 Issue of *Fraternal Law*, Jacob Krinn and Troy Henricksen, the last two individuals charged in the hazing related death of Stone Foltz at Bowling Green State University, went to trial in May. Following a two-week jury trial, they were found not guilty of the most serious charges against them, including involuntary manslaughter and reckless homicide, both felonies.

That, however, did not save them from being sentenced to serve jail time for their respective roles related to Foltz's death from alcohol poisoning. They were each convicted of multiple misdemeanors. Krinn was convicted of obstruction of justice, hazing, and failure to comply. Henricksen was found guilty of eight (8) counts of hazing and seven (7) counts of failure to comply. On August 17, 2022, they both received similar sentences, ordered to spend forty-two (42) days in jail followed by twenty-eight (28) days of house arrest and required to perform 100 hours of community service.

Other members of the Pi Kappa Alpha Fraternity chapter who had been charged in the hazing event had all plead guilty, in some cases, to felonies. Yet those individuals received lesser sentences than Henricksen and Krinn. Had Henricksen and Krinn been convicted of the felony charges, no doubt their sentences would have been substantially longer.

Since the hazing deaths of Stone Foltz and Collin Wiant at Ohio University, the State of Ohio has strengthened its hazing related laws and increased potential penalties. It is a path that other states have recently followed when hazing deaths have occurred. Unfortunately, those new laws are too late for those who have died, but hopefully they will act as a deterrent against future hazing deaths. Something desperately needs to.

Hazing Incidents Lead to Serious Repercussions for Two Local Fraternity Chapters and Their Members

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Two local fraternity chapters and their members face repercussions arising from recent hazing allegations. Specifically, the involved members are now defending against criminal charges, and the chapters are no longer operating.

First, at Michigan State University (MSU), three members the Pi Alpha Phi Fraternity were charged with a felony count of hazing resulting in death, along with three misdemeanor counts of hazing resulting in physical injury.[2] These criminal charges relate to the death of Phat Nguyen and hospitalization of three other pledging members connected to a party in November 2021.[3]

The members originally charged were the Chapter's "pledge master," "pledge dad," and president. While videos show the "pledge dad" pouring alcohol into the new members' mouths, the "pledge master" and president are implicated due to their leadership positions within the Chapter, as the prosecution claims they "knew these actions were taking place and knew the nature of the party."[4]

All charges against the Chapter president have since been dismissed, as "there was nothing to show that he individually contributed to what happened" beyond planning the party.[5] The two

[1] Haellie Gordon is a legal intern at Manley Burke and is a second-year law student at the University of Cincinnati.
[2] Jared Weber, *Three MSU Fraternity Members Face Felony Charge Over Phat Nguyen's Hazing* Death, LANSING ST. J. (June 10, 2022, 11:46 AM), https://www.lansingstatejournal.com/story/news/2022/06/09/michigan-state-fraternity-members-face-felony-over-pledges-death/7571153001/.
[3] *Id.*
[4] *Id.*
[5] Jared Weber, *Charges Dropped for Fraternity Member in Hazing Case; Two Other Men Bound Over on Felonies,* LANSING ST. J. (Sept. 15, 2022, 4:41 PM), https://www.lansingstatejournal.com/story/news/2022/09/15/one-students-charges-dropped-two-others-advanced-in-msu-hazing-case/68188219007/.

remaining individuals have waived preliminary hearings. None of these three individuals are enrolled for the fall semester at MSU.[6]

Additionally, the Chapter has been disbanded, MSU has removed the organization's status as a registered organization for at least ten (10) years, and the Pi Alpha Phi National Board has officially closed the Chapter.[7]

Second, at the University of New Hampshire, police issued arrest warrants for forty-six (46) members of Sigma Alpha Epsilon (SAE) in relation to alleged hazing at an event involving new members in April 2022.[8] The incident was initially reported to the SAE National Board, which immediately issued to the Chapter a cease and desist, began its own investigation, and informed the University's administration. The University then placed the Chapter on an interim suspension pending the completion of the police's investigation.[9]

Under New Hampshire law, police can charge "those who were the subjects and actors of the hazing as well as those who were present for the hazing and didn't report it."[10] According to Emily Garod, the Deputy Strafford County Attorney, although no one was seriously injured or hurt, the allegations concern a "dangerous ritual that needs to end."[11] As such, the charges still stand.

Fraternal Law Partners will continue to provide additional updates as these matters progress.

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[6] *Id.*
[7] *Id.*
[8] Michelle Watson & Amy Simonson, *46 University of New Hampshire Fraternity Members Issued Arrest Warrants Over Alleged Hazing,* CNN (June 14, 2022, 7:52 PM), https://www.cnn.com/2022/06/11/us/unh-fraternity-hazing-charges/index.html.
[9] *Id.*
[10] *Id.*
[11] Jack Molmud, *University of New Hampshire Hazing Lawsuit Begins for Sigma Alpha Epsilon Brothers*, NEWS CTR. MAINE (July 13, 2022, 7:57 PM), https://www.newscentermaine.com/article/news/local/university-of-new-hampshire-hazing-lawsuit-begins-for-six-brothers/97-8678f5d0-0733-44c8-9f16-9ab04ecb4ce7.

Creation of the University Park Interfraternity Council to Promote Peer Governance

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A university has every right to promptly and fairly investigate accusations of misconduct by members of fraternities and sororities. However, at times, whatever good intentions a university may have, too often universities' reactions penalize groups not even accused of misconduct, result in long delays, or punish everyone in a chapter, when only a small minority are even accused of misconduct. So, it is not surprising that there comes a time when fraternal groups may elect to disaffiliate from the university.

Disaffiliation allows the groups to operate the organization as intended and as they have a constitutional right to do. That is what happened when, on August 13, 2022, ten (10) fraternity chapters at the University of Southern California ("USC") announced the creation of the University Park Interfraternity Council ("UPIFC") and disaffiliated from USC. The ten groups were Beta Theta Pi, Kappa Alpha Order, Lambda Chi Alpha, Phi Delta Theta, Phi Sigma Kappa, Pi Kappa Alpha, Sigma Alpha Mu, Sigma Chi, Tau Kappa Epsilon, and Zeta Beta Tau. According to UPIFC, each of the ten organizations had the support of the national organization that had chartered the chapters.

The UPIFC announced that its intent is to advance peer governance and as a top priority the health and safety of their members and guests. UPIFC made it clear that all students and member organizations "will be expected to follow both the law and all organizational policies."[1]

[1] *Announcing University Park Interfraternity Council*, UNIV. PARK IFC (Aug. 13, 2022), http://www.universityparkifc.com/announcing-university-park-interfraternity-council/.

In announcing this decision, the UPIFC explained what caused the disaffiliation:

Over the past several years, the partnership between fraternity chapters and USC has been deteriorating, with significant deterioration throughout the past year stemming from a USC suspension of nearly all organizational activities lasting more than 90 days, including for organizations that have not been implicated in any wrong doing, prolonged University investigations that have resulted in lengthy, interim suspensions, as well as a unilateral decision in 2017, to enact a deferred fraternity/sorority recruitment policy which restricts the associational rights of students.[2]

The disaffiliation will, according to the UPIFC, "allow us to fully continue all normal activities, including philanthropy and fundraising events, community service, regular chapter meetings, officer elections and recruitment."[3]

The same day, the North American Interfraternity Council ("NIC") issued a statement announcing its commitment to working with the UPIFC and USC in hopes "that a bridge to a successful partnership can be built through two-way listening and a constructive, solution-oriented dialogue to resolve the concerns that have led to this point."[4] Its opening paragraph stated, "the NIC has worked for several years to address our members' concerns with USC's policies and processes that disincentivize sexual misconduct reporting and treat IFC fraternities in a manner that is fundamentally unfair and inconsistent with the Conferences' position statements on system-wide actions, organizational conduct adjudication and recruitment."[5]

[2] *Id.*
[3] *Id.*
[4] *Statement Regarding the Formation of University Park Interfraternity Council*, N. AM. INTERFRATERNITY COUNCIL (Aug. 13, 2022), https://nicfraternity.org/statement-regarding-formation-of-university-park-interfraternity-council/.
[5] *Id.*

The Los Angeles Times quoted Judson Horras, the President of NIC, as explaining "we reached a point where the [breakaway] groups did not want to go through another year of this type of system."[6]

The University expressed its strong disappointment and urged its students not to join those groups that had disaffiliated from the University. Both the University and local press reports noted that similar disaffiliations had occurred on other campuses, including the University of Colorado–Boulder, the University of Michigan, and Duke University.

It is worth noting that USC is a private university that in most states would not be required to afford its students respect for their constitutional rights. However, California's unique Leonard's Law (California Education Code 94367) applies the First Amendment of the U.S. Constitution to private colleges and universities in that State.

[6] *USC Breakaway Fraternities Make Own Rules, Defy Campus Ban*, L.A. TIMES, https://www.latimes.com/california/story/2022-08-20/fraternities-disaffiliated-from-usc-hold-fall-frosh-rush-defying-campus-ban-on-practice.

Hazing Incident At Mizzou Leaves Phi Gamma Delta Pledge Blind

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In October 2021, Daniel Santulli was pledging the Phi Gamma Delta Fraternity at the University of Missouri when he wound up in a hospital with a blood alcohol level of 0.486. The 19-year-old from Minnesota was allegedly forced by his fraternity brothers to drink an entire bottle of vodka, resulting in a blood alcohol level that exceeds a "lethal" level of 0.40, which can cause a coma or sudden death.[2]

From the hospital in Columbia, Missouri, Santulli was transported to Denver, Colorado, where he spent nearly eight (8) months in rehabilitation. Today, Santulli cannot see, walk, or speak, and is suffering from extensive brain damage that has already required over $2 million worth of medical services, and will require continuous care.[3]

Following the hazing allegations, the University of Missouri revoked Phi Gamma Delta's recognition, and further sanctioned thirteen (13) individual members. The details of those individual disciplinary sanctions are unknown, as the records are protected under FERPA.

Additionally, the Santulli family filed a civil lawsuit against several individual and corporate defendants, but has now settled with all twenty-three (23) fraternity defendants, including the national fraternity.

[1] Hanna Putoff is a second year law student at NKU's Chase College of Law.
[2] Lindsay Lowe, *19-Year-Old Former College Student Left Blind, Unable to Walk After Hazing Incident*, TODAY (June 9, 2022, 10:15 AM), https://www.today.com/news/news/19-year-old-former-college-student-left-blind-after-hazing-incident-rcna32719?fs=e&s=cl.
[3] *Id.*

Eleven (11) individuals also faced criminal liability for different charges. Back in June 2022, a grand jury indicted four (4) members on charges including felony hazing, misdemeanor supplying alcohol to a minor or intoxicated person, and felony tampering with evidence. As of late July 2022, charges were added against eight (8) additional former members. These latest criminal charges include life endangerment because of hazing, which is a felony when the act causes a risk to the life of the student/prospective member.[4] Hearings on these pending criminal charges are scheduled for the next few months.

Missouri law classifies hazing and its criminal consequences by the risks created, notwithstanding any consent given by the affected party.

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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[4] Robert A. Cronkleton, *8 More Felony Hazing Charges Filed Against Former University of Missouri Frat Members*, KANSAS CITY STAR (July 27, 2022, 12:17 PM), https://www.kansascity.com/news/local/crime/article263872557.html.