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# HAZING HORRORS: WHO'S ACCOUNTABLE?

Thousands of students pledge into the university Greek system each year, encountering rituals that can be dangerous or even deadly. Learn who may be possible defendants in a civil suit and what evidence supports your claims.

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Each year approximately 100,000 young men are initiated into fraternities, bringing the total number of fraternity members to nearly 400,000, and, without fail, each year brings more senseless tragedies from dangerous and reckless hazing traditions.<sup>1</sup> In 2017 alone, Andrew Coffey at Florida State University, Tim Piazza at Penn State University, and Maxwell Gruver at Louisiana State University all died from hazing-related activities.<sup>2</sup> Since 2005, more than 77 fraternity-related deaths have occurred, averaging more than five per year—and there is no end in sight.<sup>3</sup>

Peer pressure is at the heart of every hazing case, and young pledges frequently do things to try to gain admission into a fraternity that they would never do outside of a pledging event. Add alcohol to the mix, and the likelihood of aberrant behavior on the part of a pledge goes up tremendously. Fraternities know this and have created an environment where peer pressure thrives. Pledges are conditioned to do what the fraternity commands, and they often end up agreeing to participate in dangerous activities despite the risk of harm.

Forty-five states currently have anti-hazing laws, and

12 make hazing a felony if it results in serious injury or death.<sup>4</sup> Criminal statutes are important in trying to reduce hazing incidents on college campuses, but they often do not go far enough, and many culpable parties are never prosecuted. The civil justice system can fill that gap and hold wrongdoers accountable. In a hazing civil suit, one can cast a wider net for potential defendants than a prosecutor typically casts when filing criminal charges, and, obviously, the causes of action are different. Civil suits often include negligence claims against individuals, such as fraternity members, officers, and chapter advisers; negligence and vicarious liability claims against the national fraternity; and premises liability claims against the fraternity housing corporation. These are just some of the legal theories that you can use to seek justice for the families of hazing victims.<sup>5</sup>

### Individual Defendants

In a civil suit complaint, name individuals directly responsible for the hazing incident as defendants. Those who planned the event, those who had the duty and responsibility to stop the hazing but failed to do so, those who supplied the alcohol, and those who hosted the event—whether at the fraternity house or at an off-campus location—are all target defendants. Often, the homeowners insurance policies purchased by the students' parents provide coverage for the negligence claims although coverage defenses are always a concern, and you must try to plead around them whenever possible.<sup>6</sup>

Beyond those directly responsible for your client's injury or death, take a hard look at the leadership of the fraternity chapter. Many hazing incidents stem from the perpetuation of longstanding traditions planned well in advance by the chapter's executive board. In addition, some chapters have a "risk management officer" trained by the national fraternity

to ensure that the chapter conducts events in compliance with fraternity and university rules. Carefully look at the risk management officer when deciding whom to sue.

When the chapter leadership perpetuated the dangerous traditions, knew events were going to take place that would expose pledges to harm, and then failed to intervene to stop the harm from occurring, they should all be named as defendants even if they were not personally present when the hazing occurred.<sup>7</sup> The liability of the chapter's leaders arises from the fact that the moment they agreed to serve as officers they had a duty to discharge their duties in a non-negligent manner. If someone was injured or killed in a hazing incident on their watch, they were most probably negligent and not doing their job.<sup>8</sup>

National fraternities often appoint alumni members as chapter advisers who are supposed to provide mature adult guidance and oversight to the local chapter. The chapter adviser is typically a volunteer position that comes with a clear set of guidelines from the national organization. National fraternities often provide a handbook clearly describing the duties and responsibilities of the adviser. It is important to obtain the handbook and related documents to determine the duty owed by the adviser to the fraternity members and pledges. If the adviser fails to communicate with the chapter, fails to attend meetings, or fails to provide the necessary guidance, he too should be named as a defendant.<sup>9</sup>

Also determine whether anyone present at the event attempted to offer aid of any type, even if it was as innocuous as carrying the victim to a couch to "sleep it off" after drinking too much alcohol. Anyone who tried to help but then abandoned the victim before he was out of danger may be liable pursuant to the undertaker doctrine. "Whenever one undertakes to provide a service

to others, whether one does so gratuitously or by contract, the individual who undertakes to provide the service—i.e., the 'undertaker'—thereby assumes a duty to act carefully and to not put others at an undue risk of harm."<sup>10</sup>

The undertaker doctrine was successfully used in a case involving the University of Miami when fraternity pledge Chad Meredith drowned in a lake during a hazing event. The family's attorney argued that the fraternity officers who tried to save Meredith were the same ones who had put him in harm's way in the first place and that they were negligent in how they subsequently attempted to save him. The jury agreed.<sup>11</sup>

The undertaker theory was also used in the case of Florida State University student Andrew Coffey, who died of acute alcohol poisoning during a fraternity hazing event known as "Big Brother Night."<sup>12</sup> Several fraternity members realized Coffey was extremely drunk (he had consumed an entire bottle of whiskey), but instead of calling 911 or taking him to a hospital, they carried him to a couch and placed a trash can near his head in case he vomited. They went home and left Coffey alone, where he died sometime thereafter. Those who tried to help him undertook the duty to do so properly, but, according to the plaintiff, they were negligent in abandoning him as they did.<sup>13</sup>

The undertaker doctrine also may apply to those who have volunteered for positions within the fraternity, whether as pledge masters, as chapter advisers, or as "sober monitors" at events. If they agreed to serve in a particular capacity, they have a duty to do so in a non-negligent manner.<sup>14</sup>

### The National Fraternity

Although national fraternities attempt to distance themselves from their local chapters when lawsuits arise, they should be viewed as one and the same. National

fraternities, through the local chapters on university campuses, recruit new members with the allure of joining a nationwide brotherhood, and members' dues support the national fraternity's activities. National fraternities issue policies and procedures, train chapter leadership, appoint chapter advisers, and often oversee the pledge process. They also discipline chapters and have the power to revoke their charters. As a result, the national fraternity's liability can stem from both direct negligence and vicarious liability.

**Direct negligence claims.** Because national fraternities are often heavily involved in their local chapters' activities, the national fraternity may be found negligent for failing to implement or adequately enforce proper oversight procedures. Depending on a chapter's disciplinary history, the failure to intervene despite knowledge of a chapter's troubled history can give rise to a direct negligence claim. The more knowledge that the national fraternity has about hazing problems in its chapters, the more likely a direct negligence claim can withstand a motion to dismiss or motion for summary judgment.

Whether the national fraternity can be held directly liable is fact intensive and has resulted in different outcomes across the country. For example, a Louisiana appellate court ruled that a national fraternity "assumed a duty to regulate, protect against, and prevent hazing by its collegiate chapters" particularly when "the national organization had specific knowledge of engaging in hazing activity."<sup>15</sup> In that case, the fraternity's knowledge of prior hazing acts and efforts to address the problems persuaded the court that the national fraternity owed a direct duty to pledges of local chapters. Likewise, in Tennessee, a trial court denied summary judgment and found that a national fraternity had a duty to prevent hazing-related injuries

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when the fraternity was aware of prior acts of hazing at the chapter.<sup>16</sup>

Other jurisdictions, however, have ruled that there is no ground to impose an affirmative duty on a national fraternity based on the local chapter's actions.<sup>17</sup> And in some cases, courts have ruled that when the national fraternity does not have knowledge of prior hazing acts, it does not owe a duty.<sup>18</sup> These opinions underscore the need for a diligent investigation to uncover all dealings between the national and local chapter, including the chapter's disciplinary history.

The national fraternity also may be liable for direct negligence arising from basic premises liability theories when a person is assaulted or injured at a fraternity function. For example, the Maine Supreme Judicial Court ruled that a national fraternity had such a duty and that it extended to social invitees of a chapter event, allowing a fraternity party guest to proceed against the national fraternity in a sexual assault case.<sup>19</sup> The court found it compelling that the national fraternity exercised authority over the local chapter, imposed a code of conduct, and had a process for disciplining its members.

**Vicarious liability claims.** National fraternities also may be vicariously liable for the negligence of their members, officers, and advisers on the theory that these individuals were acting as actual or apparent agents of the national. To demonstrate that the local chapter and its members were agents of the fraternity, one must show that the national fraternity authorized them to act on its behalf, that the local chapter's members accepted that undertaking, and that the national fraternity exercised control over the individual members. The degree of control is critical to the analysis and is fact intensive.<sup>20</sup> Apparent agency can be established by demonstrating that the national fraternity made representations to a pledge or member who reasonably believed that the local chapter or its members and officers were acting on the national fraternity's behalf.<sup>21</sup> This can be proven, for example, by statements on the fraternity's website and the communications that the national fraternity sends to its new and existing members.

Virtually all fraternities have well-written anti-hazing policies, and the fraternity can be expected to argue

that the acts of hazing giving rise to the lawsuit fall outside the scope of authorized conduct.<sup>22</sup> This standard defense underscores the need to carefully plead the case and to assert all possible claims. The objective in drafting the complaint is for a ruling that the local chapter's actions were within the scope of the agency relationship with the national fraternity. If the chapter was authorized to conduct a pledge process, for example, a court may deem certain longstanding hazing rituals as connected to the pledge process and therefore within the scope of the agency relationship.<sup>23</sup>



Courts have come down on both sides of the agency issue. For example, a South Carolina appellate court upheld a verdict in favor of a hazing victim, finding that because it was within the fraternity's interest to initiate members, the hazing that occurred during the fraternity's "hell night," which was a condition of membership, was within the scope of apparent authority.<sup>24</sup>

But Indiana's Supreme Court recently affirmed summary judgment, finding that no agency relationship existed between a national fraternity and a local chapter when no evidence existed showing that the fraternity exercised control over the local members beyond the ability

to suspend or revoke the local chapter's affiliation.<sup>25</sup>

### The Local Chapter

Pursuing a case against the local chapter may not always be feasible. In some states, the local chapters operate as unincorporated associations and cannot be sued, and in other instances, it may be inefficient to sue them because some state laws require that each member of the unincorporated association be joined as a defendant.<sup>26</sup> If a chapter has 100 members, for example, such a process would be unwieldy.

### The Housing Corporation

Housing corporations are often formed by alumni and own many of the fraternity houses on college campuses. They act as landlords or property managers and owe duties to tenants and invitees as would any other property owner. Certain acts of hazing or fraternity misconduct may give rise to negligence claims against these entities based on basic premises liability theories. For example, in a case filed in federal court in Indiana, a woman sued the nonprofit housing corporation that owned and managed the fraternity house where she was sexually assaulted. The court denied the housing corporation's motion to dismiss, finding that in the context of premises liability, the defendant owed a duty to exercise reasonable care for the protection of the plaintiff while she was a guest of the fraternity house.<sup>27</sup>

### Case Investigation and Discovery

A thorough investigation along with carefully crafted discovery requests and depositions are critical to prevailing in any hazing case.

Because many states have criminalized hazing, whenever a serious hazing incident happens, the police and the local prosecutor's office undoubtedly will conduct an extensive


investigation. Maintaining an open line of communication with law enforcement is critical, and using the results of their investigation will facilitate your investigation. Law enforcement usually obtains statements from witnesses before plaintiff or defense lawyers become involved in the case—that information is invaluable in determining what happened and identifying the culpable parties, key witnesses, and theories of liability. Suit should not be filed until all police files have been reviewed.

It is also crucial to dig deep into the fraternity's culture, reputation, and disciplinary history. Has the university previously disciplined the chapter? Are there past allegations of hazing? Request information from university boards that oversee Greek life and maintain records relating to the disciplinary history of the chapters. That typically can be obtained with a subpoena or a public records request if a public university is involved.

The national headquarters of each fraternity has records of reported disciplinary problems and hazing incidents at each local chapter. In addition, national fraternities usually employ leadership consultants who travel around the country to meet with the local chapters and then report back on any issues. Obtaining those reports is key in the preparation of any hazing case. Chapters often provide those consultants with their reports, calendar of events, and an overview of the pledge process for approval, and you must obtain those records too. In addition, review the national fraternity's involvement in the pledge process and oversight of the chapter, along with its constitution and bylaws to demonstrate the fraternity's control over the chapter and bolster the direct and vicarious liability claims.

No investigation would be complete without obtaining all communications between your client and the national fraternity, between the national fraternity

and the local chapter, and among members of the local chapter. Many pledges receive a letter from the national fraternity introducing them to the pledge process, and newly minted members may receive a “Welcome Brother” letter. These letters may help prove claims for apparent agency. In addition, communications between the national fraternity and the local chapter may demonstrate that the national exercised sufficient control over the pledge process to impose vicarious liability. Communications among the members of the local chapter, whether text messages or social media postings, may shed further light on what happened at a hazing event and who was involved, which also will help support direct negligence claims against individual defendants.

Holding individuals and fraternities liable for their dangerous behavior cannot undo the harm caused, but it can help rectify the damage and prevent similar tragedies from happening to more students and their families in the future. 



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**NOTES**

1. A. Chris Gajilan, *Greek Life More Popular Than Ever, Despite Recent Controversy and Deaths*, CNN (Dec. 8, 2018), <https://www.cnn.com/2018/08/22/us/fraternity-hazing-tim-piazza-death/index.html>; N. Am. Interfraternity Conference, *Fraternity Stat. At-a-Glance* (2019), <https://nicfraternity.org/fraternity-stats-at-a-glance/>.
2. Sean Rossman, *A Year Ago, Penn State's Tim Piazza Died, and His Parents Aren't Letting Up*, USA Today (Feb. 1, 2018), [- drinking-fraternities/1078862001/.
  3. Madeline Holcombe, \*3 Fraternity Brothers Sentenced to Jail in Penn State Hazing Death\*, CNN \(Apr. 3, 2019\), <https://www.cnn.com/2019/04/03/us/tim-piazza-fraternity-member-hazing-sentences/index.html>.
  4. Madeleine Thompson & Sara Ganim, \*Pennsylvania Governor Signs Anti-Hazing Bill Named for Deceased Penn State Student\*, CNN \(Dec. 8, 2018\), <https://www.cnn.com/2018/10/19/us/tim-piazza-anti-hazing-bill/index.html>; e.g., Fla. Stat. §1006.63 \(2019\); 18 Pa. Cons. Stat. §2803 \(2019\).
  5. The same concepts apply to sororities, but that appears to be less common.
  6. While each individual policy needs to be examined, there is precedent for homeowners insurance policies providing a defense and coverage in these cases. For example, in \*State Farm Fire & Cas. Co. v. Admiral Ins. Co.\*, 2017 WL 384305, at \\*1 \(D.S.C. Jan. 25, 2017\), State Farm defended an individual under a homeowners policy when the individual hosted a fraternity event that involved the paddling of a pledge. State Farm ultimately settled with the plaintiff for \\$975,000 and sought indemnification from the fraternity's insurance policy. \*Id.\* at \\*2. Likewise in \*Amica Mut. Ins. Co. v. St. Paul Fire & Marine Life Ins. Co.\*, 2003 WL 21281666, at \\*1 \(N.D. Tex. May 29, 2003\), a pledge died due to alcohol poisoning that occurred during a “rigged drinking contest.” The decedent's estate sued two other pledges involved in the incident, who were also defended by their respective homeowners policies.
  7. E.g., Compl., \*Coffey v. Pi Kappa Phi Fraternity, Inc.\*, No. 2018 CA 000378 \(Fla. 2d Jud. Cir. Ct. filed Feb. 20, 2018\) \(naming individual officers as defendants when they helped plan a dangerous hazing event but did not attend the event\).
  8. \*Kenner v. Kappa Alpha Psi Fraternity, Inc.\*, 808 A.2d 178, 183 \(Pa. Super. Ct. 2002\) \(fraternity officers owed duty to protect pledges from harm\).
  9. See, e.g., Compl., \*Mauricio v. Alpha Epsilon Pi Fraternity, Inc.\*, No. 2018 CA 002006 \(Fla. 2d Jud. Cir. Ct. filed Sept. 12, 2018\) \(naming chapter adviser as defendant and pleading a negligence count against him for failure to attend meetings and ensure compliance with national fraternity rules and regulations\).
  10. \*Clay Elec. Coop, Inc. v. Johnson\*, 873 So. 2d 1182, 1186 \(Fla. 2003\) \(citing \*Restatement \(Second\) of Torts\* §323 \(1965\)\).
  11. Associated Press, \*UM Fraternity Members Liable in Hazing Death\*, Herald-Tribune \(Feb. 7, 2004\), <https://www.heraldtribune.com/news/20040207/um-fraternity-members-liable-in-hazing-death>; see also Fla. H.R. Staff Analysis, HB 193 \(2005\), <https://tinyurl.com/y43sm8yf>.
  12. \*Coffey\*, No. 2018 CA 000378; see Karl Etters, \*Grand Jury Report Into Death of Andrew Coffey Skewers FSU's Fraternity Culture\*, Tallahassee Democrat \(Dec. 21, 2017\), <https://www.tallahassee.com/story/news/2017/12/20/grand-jury-report-into-death-andrew-coffey-skewers-fraternity-culture/970205001/>.
  13. \*Coffey\*, No. 2018 CA 000378; see Etters, \*supra\* note 12.
  14. See, e.g., \*Grenier v. Comm'r of Transp.\*, 51 A.3d 367, 384 \(Conn. 2012\) \(fraternity owed a duty of care when it voluntarily undertook to provide transportation to pledges to fraternity event\).
  15. \*Morrison v. Kappa Alpha Psi Fraternity\*, 738 So. 2d 1105, 1119 \(La. Ct. App. 1999\); see also \*Ballou v. Sigma Nu Gen. Fraternity\*, 352 S.E.2d 488, 492 \(S.C. Ct. App. 1986\).
  16. \*Alexander v. Kappa Alpha Psi Fraternity, Inc.\*, 464 F. Supp. 2d 751, 756–57 \(M.D. Tenn. 2006\).
  17. See, e.g., \*Bogenberger v. Pi Kappa Alpha Corp., Inc.\*, 104 N.E.3d 1110, 1124 \(Ill. 2018\).
  18. See, e.g., \*Walker v. Phi Beta Sigma Fraternity \(Rho Chapter\)\*, 706 So. 2d 525, 529 \(La. Ct. App. 1997\).
  19. \*Brown v. Delta Tau Delta\*, 118 A.3d 789 \(Me. 2015\). But see \*Rogers v. Sigma Chi Int'l Fraternity\*, 9 N.E.3d 755 \(Ind. Ct. App. 2014\) \(that national fraternity did not have control over chapter house necessary to impose a duty\).
  20. \*Font v. Stanley Steamer Int'l, Inc.\*, 849 So. 2d 1214 \(Fla. Dist. Ct. App. 2003\).
  21. \*Restatement \(Second\) of Agency\* §267 \(1958\); \*Rogers\*, 9 N.E.3d at 764.
  22. See \*Bogenberger\*, 104 N.E.3d at 1120–21 \(hazing conduct fell outside the scope of any alleged agency relationship\).
  23. See, e.g., \*Ballou\*, 352 S.E.2d at 496.
  24. \*Id.\*; see also \*Krueger v. Fraternity of Phi Gamma Delta, Inc.\*, 2001 WL 1334996, at \\*3–4 \(Mass. Super. Ct. May 18, 2001\) \(citing \*Ballou\* with approval and denying motion to dismiss filed by fraternity in a wrongful death hazing case\).
  25. \*Yost v. Wabash Coll.\*, 3 N.E.3d 509, 522 \(Ind. 2014\).
  26. See, e.g., \*Johnston v. Meredith\*, 840 So. 2d 315, 316 \(Fla. Dist. Ct. App. 2003\) \(per curiam\) \(fraternity chapters that were voluntary, unincorporated associations could be sued only by serving all of their members\); \*Prime v. Beta Gamma Chapter of Pi Kappa Alpha\*, 47 P.3d 402, 405 \(Kan. 2002\) \(an unincorporated association can neither sue nor be sued\). But see \*Ballou\*, 352 S.E.2d 488 \(affirming verdict against unincorporated association\).
  27. \*Doe v. Ind. Univ. Bloomington\*, 2016 WL 7188214, at \\*4 \(S.D. Ind. Dec. 12, 2016\).](https://www.usatoday.com/story/news/nation-now/2018/02/01/penn-state-tim-piazza-hazing-</a></li>
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