Fraternity Liability Insurance, A gigantic Oxy Moron!

The Fraternity "Industry" has self-imposed integrated top down regulation from the top to the bottom combined with an insurance system paid for from the bottom and insuring only the top.

Fraternities annually collect millions of dollars for insurance premiums and retention accounts from undergraduate members and pledges. These premiums can amount to $500 per man per year, yet, somehow no or minimal coverage is afforded to the undergraduate chapters while millions of dollars of liability cover the National. Unless a plaintiff can somehow link the National to the incident causing injury, ***the only coverage available to him is that afforded by family homeowners policies of individual chapter members*. *In litigation the first move by the National's carrier is to move for its dismissal on the grounds that it cannot control the day to day activities of the local, thus separating the case from the bulk of the several million dollars worth of insurance entirely paid for by the undergraduates!***

How is this possible?

Situation post-Vietnam Era

The Fraternity "Industry" barely survived the Sixties and Seventies. Sex, Drugs and Rock and Roll was the theme on campus, and it was not clear where fraternities fit. This was compounded by the short time nationwide 18-year-old drinking age which was wiped out by the MADD-inspired Highway Funding Legislation.

However, in 1978 the film ***Animal House*** **brought instant change and instant attraction back to the fraternity world**. Fraternities, which were at risk of becoming derelict out of touch remnants of a 19th Century past, suddenly changed. The National chapter, technically the home office, was caught totally by surprise.

Animal House, plus nation-wide 18-year-old drinking had brought fraternities to a new low. To this point, insurance was something that the national bought for a couple of grand, and the more affluent chapters with alumni associations would also obtain for a little less.

Prior to the mid-80s, lawsuits against the National were unheard of, and judgments, if they happened, would go against the chapter or individuals therein. Courts would not hold the National organizations liable and found them unable to control wanton acts on campus inspired by out of control individuals at local chapters.

Suddenly things began to change. In 1986, at a Fraternity Executives Association (FEA) Annual Meeting that I attended, we as a body learned that Mo Littlefield, the Exec of Sigma Nu, was being named in a hazing suit at a local chapter that included, the Chapter, the National, as well as Mo and his wife personally.

FIPG Standards:

The New World of Insurance Crisis was upon us. **"By 1986, men's national fraternities were ranked as the sixth worst risk in the insurance industry, and number seven was hazardous waste disposal companies**. Insurance companies responded quickly. The cost of policies offered to Greek letter organizations began to soar, while the coverage available plummeted. Many underwriters simply dropped the policies and walked away from the Greek business."FIPG Manual

In December of 1987, FIPG then "Fraternity Insurance Purchasing Group, Inc.", was established. Originally FIPG was a membership organization with minimal annual dues to each fraternity or sorority member. There were 30 or 40 members of the organization. While FIPG never found or bought insurance for anyone, it adopted the first risk management code to deal with the soaring insurance costs and loss exposure. For the first time, a group of fraternities would band together with a common risk management program and seek national insurance as a package from an insurance broker. **The key element for FIPG is the FIPG Risk Management policy which is periodically reviewed and modified based upon legal experience of the members.**

In the beginning, the thing was utterly unenforceable, nobody had the staff at that time to enforce such a creation. Even now, the Nationals take the position in litigation that they cannot enforce anything at the local level on a day to day basis, despite a massive investment by the Nationals, their insurers, trade associations and colleges to implement the risk management program.

FIPG becomes a campus standard:

However, the FIPG standards grew and grew. The momentum was there. Under the prodding of the North American InterFraternity Conference (NIC), Interchange, a campus project, developed into Interfraternity Councils (IFCs) on campuses adopting the FIPG program as campus standards. This in addition to being an NIC program, was pushed by the Association of Fraternity Advisors (AFA) the trade association of the campus Greek Life staff. The concept was "peer review."

FIPG's primary focus was making the undergraduate chapters responsible for their own conduct. Interchange focused on creating and strengthening the IFC (Interfraternity Conference) on campus as a self-governing entity. It would become the enforcer, sanctioning chapters and enforcing the FIPG risk management code. While, at this time, thanks to the college lawyers, the formally powerful Greek Dean had shrunk to the part-time responsibility of some low-level college life administrator.

The AFA (Association of Fraternity Advisors) loved the new emphasis on the IFC. The new deal having it assume responsibility for preventing hazing, binge drinking and sexual harassment. And the introduction of FIPG gave everyone in the country a nice written code to apply in risk management violations.

Can you imagine an organization of 18-22-year-old fraternity members being wholly responsible for discipline of fraternity chapters? Not only that, as Holmes Murphy, the insurance broker for the Fraternity World, said in a recent tweeted memo, the IFC representative generally was:

"one position I wouldn't mind eliminating – the IFC delegate. It's true – on some campuses and in some chapters, this position is held in high regard and taken very seriously. However, more often than not, this position is one of the last to be filled and desired by the eventual recipient as much as he would desire the Bird Flu. The IFC should be the place where the future direction of the fraternity system is charted, and most chapters are sending the poor freshman who thought that IFC was internet slang for 'In-Fashion Clothes.'"

FIPG was basically a creation of Durward Owen, former Executive Director of Pi Kappa Phi, with a great deal of help from Ned Kirklin, the insurance broker, who was later to essentially run the fraternity insurance coverage industry. **Over time, affordable insurance for specific chapters or even any insurance at all, became no longer available. This forced individual chapters into the arms of the National.**

The situation today is that you cannot be recognized as a fraternity on any campus if you are not imposing the FIPG risk management standards. Although with the 2016 absorption of FIPG into the FEA, all fraternities and sororities are now members anyway. FIPG risk management policy from the top down was mandated to obtain coverage for insurance. Coverage for individual chapters is no longer available.

However as we have shown, coverage for chapters under the National Policy is basically non-existent!

Insurance is now a primary Revenue and Expense Source for the National Fraternities

Suddenly, the situation had changed. When I stepped down as Executive Director of Delta Kappa Epsilon in 2009, our insurance premium was over $175,000 with an additional $25,000 self-insured-retention and had reached over $300,000 before I implemented strong Risk Management Enforcement. That was small potatoes to the situation today. **The average National premium is well over a million dollars per year.**

*However, **in the beginning, the chapters were covered**, that is all except any "guilty" individuals, meaning those who participated in whatever episode caused the injury. But, in seeking ways to reduce insurance cost, the insurance brokers and the insurers either eliminated coverage for the chapter or limited it to $250,000 which would be reduced by legal fees and expenses of defense lawyers. So, **today unless a specific link to the National can be proven by a plaintiff, there is no coverage for the individuals who paid 100% of the program by the National leadership who paid none of the premium!***

Similarly, the average "Risk Management Expense" (Read that "insurance premium) for a National Fraternity is well over a million dollars not including an Self Insured Retention an insurance reserve dictated by its insurance broker.

All of this is paid for by assessments on the undergraduate members and pledges in the various chapters. Insurance premiums have now become a profit source for the National. All premiums are paid by the undergraduates are based upon a Spring estimate of the Fall premium divided by anticipated membership of the chapters. The premium must be paid, so universally, the Nationals way under estimate membership and apply the premium to actual membership, resulting in a highly profitable enterprise. Risk Management Fees as high as $500 per man annually are all paid from the bottom.

As of the summer of 2016, FIPG (the Acronym now means Fraternity Information and Programming Group) is a section of the trade association - Fraternity Executives Association (FEA) that group includes the executive directors of every fraternity and sorority. It now claims the FIPG Standards to be simply advisory, however, given the universality of the FIPG Standards, that is not a realistic claim, but it appears to be an attempt by the Nationals and the insurance counsel to further avoid liability.

The FIPG Risk Management Policy

Key to FIPG is its Risk Management Policy, a small print two or three-page document that is "the Policy," "the Rock," or "The 10 Commandments" of Fraternity Risk Management. This policy is updated periodically based upon litigation experience of the program. If FIPG policy is the 10 Commandments, the risk management Manual, a 50 page how to work, is the Bible. Current versions of both are available at www.fipg.org . Every National Fraternity has an FIPG based set of Risk Management Standards which are mandatory to all levels of membership, strictly enforced (allegedly), and transmitted to all new members and retransmitted to all active membership annually.

FIPG Risk Management Policy from FIPG Manual

"The Risk Management Policy of FIPG, Inc. includes the provisions, which follow and shall apply to all fraternity entities and all levels of fraternity membership.

ALCOHOL AND DRUGS

1. The possession, sale, use, or consumption of ALCOHOLIC BEVERAGES, while on chapter premises or during a fraternity event, in any situation sponsored or endorsed by the chapter, or at any event a reasonable, objective observer would associate with the fraternity, must be in compliance with any and all applicable laws of the state, province, county, city, and institution of higher education and must comply with either the BYOB or third party vendor guidelines.

2. No alcoholic beverages may be purchased through or with chapter funds nor may the purchase of same for members or guests be undertaken or coordinated by any member in the name of or on behalf of the chapter. The purchase or use of a bulk quantity or common source(s) of alcoholic beverage, including but not limited to kegs or cases, is prohibited.

3. OPEN PARTIES, meaning those with unrestricted access by non-members of the fraternity without specific invitation, where alcohol is present, are prohibited.

4. No members, collectively or individually, shall purchase for, serve to, or sell alcoholic beverages to any minor (i.e. those under legal drinking age).

5. The possession, sale, or use of any ILLEGAL DRUGS or OTHER CONTROLLED SUBSTANCES while on chapter premises or during a fraternity event or at any event that a reasonable, objective observer would associate with the fraternity is strictly prohibited.

6. No chapter may co-sponsor an event with an alcohol distributor or tavern (tavern defined as an establishment generating more than half of annual gross sales from alcohol) at which alcohol is given away, sold, or otherwise provided to those present. This includes any event held in, at, or on the property of a tavern as defined above for purposes of fundraising. However, a chapter may rent or use a room or area in a tavern as defined above for a closed event held within the provisions of this policy, including the use of a third party vendor and guest list. An event at which alcohol is present may be conducted or co-sponsored with a charitable organization if the event is held within the provisions of this policy.

7. No chapter may co-sponsor, co-finance, attend, or participate in a function at which alcohol is purchased by any of the host chapters, groups, or organizations.

8. All recruitment or rush activities associated with any chapter will be non-alcoholic. No recruitment or rush activities associated with any chapter may be held at or in conjunction with a tavern or alcohol distributor as defined in this policy.

9. No member or associate member shall permit, tolerate, encourage, or participate in "drinking games." The definition of drinking games includes but is not limited to the consumption of shots of alcohol, liquor, or alcoholic beverages; the practice of consuming shots equating to one's age; "beer pong;" "century club;" "dares;" or any other activity involving the consumption of alcohol that involves duress or encouragement related to the consumption of alcohol.

10. No alcohol shall be present at any associate member activity or ritual of the chapter. This includes but is not limited to activities associated with "bid night," "Big Brother – Little Brother" events or activities, "family" events or activities, and initiation.

HAZING

No chapter, colony, student or alumnus should conduct, participate in nor condone hazing activities. Permission or approval by a person being hazed is not a defense.

Hazing activities are defined as:

"Any action taken or situation created, intentionally, whether on or off fraternity premises, to produce mental or physical discomfort, embarrassment, harassment, or ridicule. Such activities may include but are not limited to the following: use of alcohol, paddling in any form, creation of excessive fatigue, physical and psychological shocks, quests, treasure hunts, scavenger hunts, road trips or any other such activities carried on outside or inside of the confines of the chapter house; wearing of public apparel which is conspicuous and not normally in good taste, engaging in public stunts and buffoonery, morally degrading or humiliating games and activities, and any other activities which are not consistent with academic achievement, fraternal law, ritual or policy or the regulations and policies of the educational institution or applicable state law."

SEXUAL ABUSE AND HARASSMENT

The fraternity will not tolerate or condone any form of sexist or sexually abusive behavior on the part of its members, whether physical, mental or emotional. This is to include any actions, activities or events, whether on chapter premises or an off-site location which are demeaning to women or men, including but not limited to verbal harassment, sexual assault by individuals or members acting together. The employment or use of strippers, exotic dancers or similar, whether professional or amateur, at a fraternity event as defined in this policy is prohibited.

EDUCATION

Each fraternity shall annually instruct its students and alumni/alumnae in the Risk Management Policy of FIPG, Inc. Additionally, all students and key volunteers shall annually receive a copy of the Risk Management Policy and a copy of the policy shall be available on the fraternity website. For more information, refer to www.fipg.org." FIPG

The FIPG Manual is a 50-page manual that is annually transmitted to all members, available on line and distributed by all nationals to all chapters. Over time, it has become obvious that chapters do not willingly follow FIPG. A variety of differing plans and programs have been adopted by the various fraternities ranging from elimination of pledge-ship to alcohol free housing options. Increased publicity on Alcohol related FIPG violations have attracted increased attention with a series of tragedies that have hit the media, starting with the Hipps death at Clemson, the Piazza death at Penn State, Gruver death at LSU and the Coffey fatality at Florida State. This has resulted in public demand for increased supervision by National Fraternities, legislation being proposed, increased liability exposure for fraternities at all levels, and collegiate demands for increased supervision of undergraduate chapters.

Developments in the Insurance Industry Affecting the Risk Management System

As noted previously, there are basically two players in the insurance field, Ned Kirklin whose organization, now Holmes Murphy, came to dominate the insurance market along with the James R. Favor, Inc. organization. James R. Favor, Inc. has a direct connection to Lloyds of London and is wholly owned by a group of several National Fraternities. The other organization is FRMT, Ltd. a captive insurance provider controlled by Holmes Murphy with 33 current owners that are National Fraternity Headquarters.

FRMT Ltd. and James R. Favor, Inc.

The driving engine behind FRMT has been Ned Kirklin. In September of 1996 Ned with 12 National Fraternities formed FRMT, Ltd. a Bermuda based reinsurance company. It was brought onshore to Vermont in 2007 at a meeting that I attended, where it assumed its current organizational structure.

James R. Favor, Inc. is an insurance brokerage owned by a group of Nationals with direct access to Lloyd's of London. Both operate similarly. My experience was with FRMT as Executive Director of Delta Kappa Epsilon.

According to its website, FRMT, Ltd. performs the following:

In addition to providing comprehensive insurance coverage the FRMT organization works to provide risk management resources and education to improve the undergraduate experience of their members. The risk management efforts include:

A) Semi-annual publishing and distribution of FRMT News.

B) Sponsorship of the FRMT Risk Management College each June as a risk management educational program for the professional staff and volunteers of FRMT member fraternities and invited guests.

C) Development and support of this web-based resource (FRMTLTD.org).

FRMT Membership

There are currently 33 members in FRMT. Only members enforcing FIPG were permitted to join. Membership is by election of the current members. Letters of support from board members of the applicant are required, and a sponsor is named to shepherd the application through the process. There is extensive analysis of the loss ratios and experience of the applicant. There are various reporting requirements and Kirklin's group figures the annual reserves and premium for each member group and notifies each fraternity at the Annual Meeting of the FEA (Fraternity Executives Association). Billing is in the fall based upon a chapter census submitted by each member and payable in a variety of options.

Holmes Murphy provides a full range of investigators, counsel, newsletters, a Member Accident Protection Plan that provides up to $100,000 coverage for accidental injury, an annual "risk management college," several programs, and lots of Twitter feeds on Risk Management. It also has Webinars covering all risk management topics that are continually marketed through Tweets and newsletters and are actively posted on the FRMT, Ltd. website.

Thus, Fraternity Coverage is top down insurance paid for from the bottom up. All entities under the national blanket, headquarters, foundations, regionals, alumni, housing corporations, local chapters and members are supposed to be covered to a certain extent. The primary funding source is an annual payment from each undergraduate member. **This is primarily the means by which the nationals got control of the chapters, which historically had been local fairly autonomous entities.**

Holmes Murphy or James Favor will submit to each member a premium number and an annual Self-Insured Retention (SIR) which goes into an account that the National has no access to but can be drawn on by Holmes Murphy or the insurance company.

The premium is divided by the expected chapter population and assessed to each chapter on a per man premium amount. This is collected from all active members and pledges and used to pay the insurance premium and the SIR. **The key purpose of this arrangement is to protect the National from behavior of the chapters and individuals associated with the chapters.**

For this to work, a vital element is adherence to the FIPG risk management code. It is the duty of the National to impose this top down code on the

undergraduate membership to keep risk away from the National which is the primary insured in this whole system.

The basic understanding is that it is the duty of the National that when the local chapter is failing, the National must intervene to prevent harm and injury and thereby liability and damages from ocurring at the local.

However, to the contrary, Counsel for the Fraternities in litigation will either try to sever all undergraduate coverage for the undergrads having violated law or the Risk Management Policy, or the policy will limit the coverage of the undergraduates to $250,000 or less regardless which is reduced by actual expenses and attorney fees from its two principal law firms in San Francisco and Austin.

The policy and the code is generated at the top. So, the maximum coverage is generated for the National and, as anybody who has been involved in fraternity litigation can testify, slides down to nothing before it reaches the undergraduate level. ***The Nationals in many cases actually advise the undergraduate members to make certain that they have good family property coverage (in small print!), because they may be excluded from coverage for being tortfeasors.***

As I have stated, insurance has become the means by which the National was to get real power. In the past, the National was essentially something the chapters and their alumni associations could ignore. However now the insurance companies, if they would grant coverage at all, have mandated coverage for all chapters and the national as one package and will not insure a single chapter without covering the entire entity. But as you now realize there is no coverage for the chapters or undergraduate members!

Plaintiffs' lawyers, is it not time to add a Bad Faith Insurance Claim to your lawsuits?!

As you undergraduates head for your summer fraternity conventions, challenge your adult leadership, let your parents know what is going on! Realize that you are paying 100% of the premium and being rewarded with 0% of the Coverage!

David K. Easlick is an Expert Witness in Fraternity Hazing Cases. He is a lawyer and past Executive Director of Delta Kappa Epsilon Fraternity. He may be contacted at davideaslick@gmail.com.