

"The national fraternity, having sponsored what amounts to a group of local drinking clubs, cannot disclaim responsibility for the risks ... "

In light of my discussion on the Michigan Court of Appeals Case of [Colangelo v. Tau Kappa Epsilon](#) earlier this month, let us now look at liability for the Fraternity National as seen by the Supreme Court of Arizona in this 1995 Opinion of that Court.

Thanks to the explosion of publicity erupting against fraternities thanks to the cases of Tucker Higgs mother and father against Sigma Phi Epsilon, Tim Piazza's family's eventual death case against Beta Theta Pi, Max Gruver's parents future death case against Phi Delta Theta, and the family of Andrew Coffey's just settled case against Pi Kappa Phi there is growing outrage against college fraternities and their out of control behavior, substance abuse and general mayhem.

This case involved a motorist killed by collision with a drunk Delta Tau Delta Fraternity member following a party where members of the DTD Fraternity all contributed to a social fund which purchased alcohol for the party. The fraternity chapter, members of the fraternity and the National Fraternity were all sued. The trial court granted summary judgment for all. The Court of Appeals affirmed and the Supreme Court reversed and remanded. On remand the Superior Court granted the National Fraternity's motion for summary judgment. On further appeal the Court of Appeals held that a fact question existed as to whether a letter that the National Fraternity sent to the chapter was evidence enough to exercise due care. The Supreme Court opined "The summary judgments with respect to member liability and negligence of th national fraternity are reversed."

In so holding, Judge Livermore, presiding judge, stated as follows:

The primary basis on which summary judgment was granted to the national fraternity is that there was neither a common law duty on the part of the national fraternity nor one assumed by it to control the conduct of local chapter members. There are cases so holding. See *Campbell v. Board of Trustees*, [495 N.E.2d 227](#) (Ind. App. 1986); *Alumni Association v. Sullivan*, [Pa. 356](#), [572 A.2d 1209](#) (1990). We decline to follow them on the facts of this case. **The national fraternity invites membership in a loosely associated group of clubs, one of the primary purposes of which is to engage in parties where liquor is served. Indeed, alcohol abuse is, as the national fraternity recognizes, a serious problem in college fraternities. As our supreme court said in an earlier appeal in this case: "We are hard pressed to find a setting where the risk of an alcohol-related injury is more likely than from underaged drinking at a university fraternity party the first week of the new college year."** *Estate of Hernandez v. Arizona Board of Regents*, [177 Ariz. 244](#), 255, [866 P.2d 1330](#), 1341 (1994). **The national**

fraternity, having sponsored what amounts to a group of local drinking clubs, cannot disclaim responsibility for the risks of what it has sponsored. The national fraternity exercises control over many aspects of the activities of its local chapters. That a duty exists in this circumstance was implicitly admitted by the act of the national fraternity in sending to local chapters instructions to abide by local laws and university regulations in serving alcohol at chapter functions. Whether such an admonitory letter is sufficient to discharge any duty to exercise reasonable care is, of course, for the jury to decide. See *Furek v. University of Delaware*, [594 A.2d 506](#) (Del. 1991).[1] The argument that the national fraternity had no power to control the activities of the local chapter or its members is belied by the much stricter alcohol policy adopted by the local chapter at the request of the national after the incident in this case. Rule 407, Ariz.R.Evid., 17A A.R.S. (Emphasis Added)

Whether Estate of Hernandez becomes the established law regarding liability for the National Chapters or not depends upon the National Organizations abandoning the absurd concept that they have no control over the day to day operation of the Chapters and stopping the nonsense before we encounter another senseless death!

David K. Easlick currently serves as an Expert Witness. He is considered an “Anti-hazing and Risk Management Specialist, and is an expert witness in trials dealing with hazing and Risk Management engendered lawsuits involving fraternities. He has represented both plaintiffs and a National Fraternity.

As the Executive Director of Delta Kappa Epsilon International Fraternity for over twenty-nine years, affiliate member of the North American InterFraternity Conference, associate member of the Association of Fraternity/Sorority Advisors, business member, nonprofit member NASPA, and past member of FIPG and FRMT, he is an extremely qualified and understands both industry standards and best practices in Fraternal lawsuits.

As a lawyer and former litigator, David offers unique advice to counsel seeking it, however he does not try cases or seek out litigation clients.