No. 120951

In the

Supreme Court of Illinois

GARY L. BOGENBERGER, as special administrator of the Estate of David Bogenberger, deceased,

Plaintiff-Appellant,

vs.

PI KAPPA ALPHA CORPORATION, INC., a corporation; PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an unincorporated association; and ALYSSA ALLEGRETTI; JESSICA ANDERS; KELLY BURBACK; CHRISTINA CARRISA; RAQUEL CHAVEZ; LINDSEY FRANK; DANIELLE GLENNON; KRISTINA KUNZ; JANET LUNA; NICHOLE MINNICK; COURTNEY ODENTHAL; LOGAN REDFIELD; KATIE REPORTO; TIFFANY SCHEINFURTH; ADRIANNA SOTELO; PRUDENCE WILLRET; KARISSA AZARELA; MEGAN LEDONE; NICHOLE MANFREDINI; JILLIAN MERRIL; and MONICA SKOWRON,

Defendants-Appellees,

(CAPTION CONTINUED ON INSIDE COVER)

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-15-0128.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 2013 L 1616.
The Honorable **Kathy M. Flanagan**, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLANT

MICHAEL W. RATHSACK
Attorney for Gary Bogenberger, Administrator of the Estate of David Bogenberger, deceased

10 South LaSalle Street
Suite 1420
Chicago, Illinois 60603
(312) 726-5433
mrathsack@rathsack.net

Of Counsel:

PETER R. COLADARCI
and
MICHAEL W. RATHSACK

COUNSEL PRESS · (866) 703-9373

PRINTED ON RECYCLED PAPER

ORAL ARGUMENT REQUESTED

and

ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS, an unincorporated association; ALEXANDER M. JANDICK, individually and as an officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY; JAMES P. HARVEY, individually and as officer of PI KAPPA ALPHA ETA NU CHAPTER; OMAR SALAMEH, individually and as an officer of PI KAPPA ALPHA ETA NU CHAPTER; PATRICK W. MERRILL, individually and as an officer of ETA NU CHAPTER OF PI KAPPA ALPHA FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY; STEVEN A. LIBERT, individually and as an officer of PI KAPPA ALPHA ETA NU chapter; JOHN HUTCHINSON, individually and as an officer of PI KAPPA ALPHA ETA NU chapter; DANIEL BIAGINI, individually and as an officer of PI KAPPA ALPHA ETA NU chapter; MICHAEL J. PHILLIP, Jr.; THOMAS F. COSTELLO; DAVID R. SAILER; ALEXANDER D. RENN; MICHAEL A. MARROQUIN; ESTEFAN A. DIAZ; HAZEL A. VERGARALOPE; MICHAEL D. PFEST; ANDRES J. JIMENEZ, Jr.; ISAIAH LOTT; ANDREW W. BOULEANU; NICHOLAS A. SUTOR; NELSON A. IRIZARRY; JOHNNY P. WALLACE; DANIEL S. POST; NSENZI K. SALASINI; RUSSELL P. COYNER; GREGORY PETRYKA; KEVIN ROSSETTI; THOMAS BRALIS; and PIKE ALUM, L.L.C.,

Defendants.

POINTS AND AUTHORITIES

I. The national fraternity controlled pledging at the chapter level and knew the dangers presented when hazing is incorporated into pledging, and specifically encouraged the Mom and Dad's Night at issue here. Its conduct violated the public policy underlying the Hazing Act and made it legally responsible for injuries resulting from the hazing.

II. Plaintiff's complaint stated a cause of action against nonmember sorority women participating in the hazing. The court erred when it ruled that nonmembers did not owe a duty because they were not part of the process of determining which pledges would be invited to become members.

NATURE OF THE CASE

David Bogenberger was a pledge of the Eta Nu chapter of Pi Kappa Alpha International Fraternity at Northern Illinois University. He and fellow pledges were required to participate in an annual fraternity pledge event called Greek Mom and Dad's Night. Pledges went from room to room in the fraternity house where fraternity members, assisted by women non-members (Moms), asked nonsensical questions. When pledges answered "incorrectly", they were told to drink cups of vodka. The event was designed to make them intoxicated, and the fraternity set aside areas to which pledgees were to be carried when they lost consciousness. David died that night after his blood alcohol reached .43 mg/dl in less than 90 minutes.

David's estate sued the three fraternity organizations, their members, and the participating non-members, alleging that defendants' actions violated the Hazing Act and caused David's death. Defendants moved to dismiss, claiming social host immunity under the Dram Shop Act. The circuit court dismissed the complaint for failure to state a cause of action. The appellate court reversed as to the local chapter and the members but affirmed as to national organizations Pi Kappa Alpha International Fraternity and Pi Kappa Alpha Corporation and the nonmembers. *Bogenberger v. Pi Kappa Alpha Corp., Inc.*, 2016 IL App (1st) 150128; App. at A43.

The question raised on the pleadings is whether the complaint states a cause of action as to the national fraternity organizations and the non-members.

ISSUES PRESENTED FOR REVIEW

The issues presented for review are:

1) Whether allegations that the national fraternity knew about and encouraged hazing by its local chapter stated a cause of action for the death of pledge David Bogenberger resulting from that hazing ritual; and

2) Whether allegations that non-members who participated in the hazing as "Moms" and knew the event was intended to cause insensate intoxication stated a cause of action for the death of pledge David Bogenberger.

STATEMENT OF JURISDICTION

The appellate court issued its decision on June 13, 2016, under 2016 IL App (1st) 150128. This court granted plaintiff's petition for leave to appeal on September 28, 2016, and subsequently granted motions extending the time for filing all appellant briefs to December 7, 2016. This court has jurisdiction pursuant to SCR 315.

STATUTE INVOLVED

720 ILCS 120/5. (Now 720 ILCS 5/12C-50)

(a) A person commits hazing when he or she knowingly requires the performance of any act by a student or other person in a school, college, university, or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution, if:

(1) the act is not sanctioned or authorized by that educational institution; and

(2) the act results in bodily harm to any person.

(b) Sentence. Hazing is a Class A misdemeanor, except that hazing that results in death or great bodily harm is a Class 4 felony.

STATEMENT OF FACTS

The circuit court dismissed the complaint pursuant to Section 2-615 and consequently the facts come from the complaint. R. C3030 (v13); App. at A1 (pages from complaint to which reference is made in this brief). David Bogenberger was a freshman at Northern Illinois University and a pledge of Eta Nu, a campus chapter of Pi Kappa Alpha International Fraternity.[1] Pledging the fraternity involved a series of events during the fall semester designed to familiarize active fraternity members with pledges who were potential new members. App. at A4 (¶3).

Organizing the pledge event

The Eta Nu local chapter fraternity members met and adopted a plan for a "Mom and Dad's Night" pledge event to be held at the fraternity house the evening of November 1, 2012. App. at A4 (¶4). Mom and Dad's night is a common pledging activity practiced across the country by chapters of this national fraternity as well as other fraternities. It is also known as Greek Family Night. App. at A4 (¶1). Employees of the national fraternity told chapter members that such nights were good for pledge and member retention and encouraged members to hold such events as part of the pledging process. App. at A4 (¶2). The chapter defendants believed the event would improve the retention rate for pledges and that would benefit the

[1] Defendants Pi Kappa Alpha International Fraternity and Pi Kappa Alpha Corporation will be referred to jointly as the national organization. The Pike website describes their separate functions. That document is at https://www.pikes.org/resources/chapter-resources/org-chart-position-handbooks, at 1.

entire fraternity organization because an increase in the number of members would also increase income from member dues. App. at A6 (¶14). The event was not sanctioned by the university. App. at A9 (¶34).

For this event, the fraternity directed members to obtain vodka for the pledges. App. at A6 (¶16). The active members participating in the event each selected a pledge for whom he and a designated sorority member would serve as the pledge's Greek father and mother. App. at A6 (¶17). The fraternity's plan for this pledge event designated seven rooms in the house to which "Greek couples" would be assigned to question pledges and give the required alcohol. App. at A4 (¶5). The "Moms and Dads" and the other fraternity members involved would not have to drink. App. at A5 (¶9).

Pledges were to be divided into seven groups of two or three pledges and rotated from room to room every ten minutes. App. at A5 (¶6). The fraternity's plan called for the pledges to become unconscious. After that, members were supposed to check on pledges periodically and their heads and bodies were to be placed so they would not choke on their own vomit. App. at A5 (¶8). Executive fraternity officers had breathalyzers and used them to measure the blood alcohol levels of insensate pledges. App. at A5 (¶10).

The hazing event

Pledged were told that attendance and participation in this pledge event, including drinking excessive amounts of alcohol, was mandatory and a prerequisite for active membership. App. at A5 (¶11), A7-8 (¶25), A13 (¶7).

Pledges believed membership in this fraternity would vest them with a highly valued social status at Northern Illinois. App. at A21 (¶5). Pledges were also told the purpose of the evening was for them to learn who their Greek Fathers and Mothers were and encourage a mentoring relationship with them. App. at A6 (¶13).

Pledges were told to dress formally and report to the fraternity house at 7:30 p.m. on Thursday, November 21, 2012. App. at A5 (¶12). They were then divided into seven groups of two or three pledges, as the fraternity had planned. The members gave each pledge a four ounce plastic cup, and rotated them from room to room every ten minutes. App. at A5 (¶6), A7 (¶19). The fraternity used seven rooms to which two or three "Greek couples" were assigned to ask the pledges personal and nonsensical questions for about 10 minutes. When pledges answered incorrectly, the "Greek parents" in each room filled the cup with vodka and required the pledges to drink it. App. at A4 (¶5), A7 (¶¶19-22).

Pledges reluctant to drink were verbally harassed, being called pussies and bitches by members and the participating sorority members, until they relented and drank. App. at A7 (¶23). At the end of the session in each room, pledges were required to drink another cup of vodka. App. at A7 (¶24). At the close of the pledge event that evening, members and non-member participants took pledges to the basement where they were given t-shirts,

paddles and buckets decorated by the Greek Moms to vomit in. App. at A8 (¶27).

By the end of that evening, David Bogenberger had consumed three to five cups of vodka in each of the seven rooms over a period of about an hour and a half. App. at A8 (¶26). They put David into the bed of Steven Libert, his "Greek father". Member Gregory Petryka positioned his head so he would not choke if he vomited. App. at A8 (¶30). Members checked the pledges and adjusted their heads to prevent choking from vomit. App. at A9 (¶32).

At about 11:00 p.m., Eta Nu chapter president Alexander Jandick and officer Patrick Merrill texted all fraternity members, warning them to delete any pictures or videos of passed out pledges. App. at A8 (¶31). The message said: "If you or any girl you know has a pic or vid of a passed out pledge delete it immediately. Just do it. From Jandick." After the pledges had drunk to the point being unconscious, some fraternity members discussed whether to seek medical attention for the pledges but determined they would not obtain assistance. Those members also instructed others not to call 911 or seek such help. App. at A9 (¶33).

National fraternity involvement

Pi Kappa Alpha International Fraternity and Pi Kappa Alpha Corporation organize and promote membership in local chapters like Eta Nu and regulate them. App. at A5 (¶1), A11 (¶4). The International Fraternity is an unincorporated association and the other entity is a corporation which

organizes meetings and conventions for the entire fraternity. See https://www.pikes.org/about-pike/values-position-relationship-statements. They organize, promote, and recruit membership in Eta Nu and the other fraternity chapters and the national fraternity. App. at A9 (¶1). They direct local chapters to initiate pledges into the Pi Kappa Alpha organization. App. at A12 (¶5). They require local chapters to adhere to the fraternity constitution, fraternity risk assessment policy, and the fraternity pledge manual. App. at A10 (¶1). They have authority to control local chapters. App. at A10 (¶2).

The national group has the power to expel or discipline chapters for violating fraternity rules, including even the right to prohibit pledging activity. App. at A10 (¶2). Those rules include a rule barring hazing. App. at A10 (¶1). To gain information as well as guide and assess their local chapters, the national sends chapter consultants on week long visits to the chapters. App. at A11 (¶3). Those consultants obtain detailed granular knowledge about the conduct and operation of each local chapter. App. at A11 (¶3). The consultants analyze chapter recruitment performance, management, and risk awareness education, in addition to alumni relations, finances, housing, athletics, scholarship, campus involvement, community service, and public relations. *Id.*

From such reports, the national knew their Eta Nu chapter at Northern Illinois had no continuing risk education program or any risk

awareness program. *Id.* Their consultants advised the national that Eta Nu had a stigma and reputation on the campus as a fraternity of meatheads. *Id.* Consequently, the national recommended that Eta Nu diversify its campus activities to develop a positive image. *Id.*

The national fraternity is supported by fees collected from the fraternity chapters. App. at A12 (¶5). Seventy five percent of the national group income derives from undergraduate member dues. App. at A12 (¶5). Local chapters including Eta Nu were aware that their good standing with the national depended on continuing and increasing those dues. App. at A12 (¶5). The national fraternity was aware, by way of its Chapter Consultant who had spent a week at this chapter, that for three years the Eta Nu chapter had not provided risk awareness education to its members and had no risk management committee or plan. App at A11 (¶3).

Charges against national defendants

Plaintiff charged that the International Fraternity allowed pledge events which required consumption of dangerous levels of alcohol and encouraged events like the one which resulted in David Bogenberger's death because they brought in revenue. App. at A14 (¶10). Participation in the event was a condition to being accepted for membership, a membership which the pledges believed carried a highly valued social status. App. at A21 (¶5).

Specifically, plaintiff alleged the national fraternity permitted pledge events like this which required pledges to consume excessive amounts of

alcohol. App. at A14 (¶10 (a)). It also failed to warn its chapters including the Eta Nu chapter about the risks of requiring alcohol-based pledge events even though it knew such events can result in fatalities. App. at A14 (¶10 (b)). It did not take steps to ensure that its local chapters followed the policies and procedures it claimed to have adopted for pledging. App. at A14 (¶10 (e)).

The national fraternity also encouraged its local chapters to hold Mom and Dad's Night functions because they were considered good for both member retention and pledge retention. App. at A14 (¶10 (f)). Those two goals increased revenue and income to the national through dues and fees. *Id.* The national group further failed to ensure that Eta Nu had a functioning risk education program despite knowing that its local chapter had not had such a program for three years. App. at A15 (¶10 (h)).

Charges against non-member participants

The local fraternity chapter directed active members to contact sorority members to serve as Greek mothers for the event. App. at A6 (¶16). Plaintiff charged the following non-fraternity women students with assisting and acting in concert with fraternity members to carry out the pledge event: Alyssa Allegretti, Jessica Anders, Kelly Burback, Christina Carrisa, Raquel Chavez, Lindsey Frank, Danielle Glennon, Kristinna Kunz, Janet Luna, Nichole Minnick, Courtney Odenthal, Logan Redfield, Katie Reporto, Tiffany Scheinfurth, Adrianna Sotello and Prudence Willret. App. at A31 (¶1).

These participants knew pledges would be required to consume dangerous amounts of alcohol at the event. App. at A32 (¶2). The participating sorority members also knew that pledge participation in the Mom and Dad's Night was a prerequisite to fraternity membership. App. at A32 (¶3). The defendant nonmembers knew pledges regarded fraternity membership as a highly valued social status. App. at A32 (¶3). Finally, they decorated the buckets into which the pledges were to vomit. App. at A8 (¶27).

Charges against Eta Nu and member participants

Eta Nu was the Northern Illinois chapter of Pi Kappa Alpha, the national fraternity. The chapter's officers were Alexander Jandick, James Harvey, Omar Salameh, Patrick Merrill, Stephen Libert, John Hutchinson and Daniel Biagini. App.at A19-A20 (¶2). Plaintiff alleged they planned this event where pledges were required to drink alcohol to a point of insensate intoxication as a condition of membership in the fraternity. App. at A23 (¶1), A25 (¶5 (a, c, d)). They planned for intoxicated and unconscious pledges to be placed in rooms in the fraternity house rather than obtaining necessary medical attention for them. App. at A25 (¶5 (b)). They carried plaintiff's decedent to a room where he would not be seen. App. at A26 (¶5 (j)). Plaintiff also alleged that Eta Nu and its members failed to obtain medical help and dissuaded other members from seeking medical assistance for the intoxicated pledges. App. at A22 (¶8), A25 (¶5 (e)), A26 (¶5 (i)).

Plaintiff similarly charged the following fraternity members with assisting or carrying out the plan: Michael Phillip, Thomas Costello, David Sailer, Alexander Renn, Michael Marroquin, Estefan Diaz, Hazel Vergaralope, Michael Pfest, Andres Jimenez, Isaiah Lott, Andrew Bouleanu, Nicholas Sutor, Nelson Irizarry, Johnny Wallace, Daniel Post, Nsenzi Salasini, Russell Coyner, Gregory Petryka, Kevin Rosetti and Thomas Bralis. App. at A27-A28 (¶1). They were charged with the same misconduct described above and additionally that they provided the alcohol for the event. App. at A30 (¶6).

Events in the trial court

Plaintiff's alleged that defendants singly and collectively violated Illinois' anti-hazing statute. R. C3030 (v13) (complaint); App. at A1 (pages from complaint cited in this brief). The national groups, the local fraternity and its members, and the sorority non-member defendants moved to dismiss under Section 2-615. R. C2255, C2391 (v10), C2561, C2583 (v11), C2764, C2864, C2945 (v12), C3104 (v13) (motions against the fourth amended complaint were deemed directed against the final fifth amended complaint). Defendants claimed the event was a social party rather than hazing and that as social hosts they were immune under the Dram Shop Act. They also claimed that plaintiff did not sufficiently allege that pledge participation in the Mom and Dad's Night with its required consumption of excessive alcohol

was a prerequisite to fraternity membership, and that the complaint lacked sufficient facts to support a cause of action.

Plaintiff had earlier sought leave to conduct discovery to learn the specific identities of those committing specific acts, to address defendants' contention that the complaint did not identify specific individual conduct. His counsel informed the court that the police records including witness statements about the event, the most detailed information available to plaintiff, did not identify individual names or conduct beyond what he had alleged. R. C3265 (v14). The court denied the motion. R. C3286 (v14).

Plaintiff responded jointly to the motions to dismiss, and additionally filed exhibits to that response in a digital format. R. C3459; C3481 (exhibits) (v14). Those exhibits included the deposition of a fraternity representative, two statements and the consultant's reports. R. C3586, C3771, C3935.

The circuit court dismissed the case with prejudice. R. C3451; App. at A35.

The appellate court reversed the dismissal and reinstated the claims against the local Eta Nu fraternity chapter and its members. App. at A43. The court followed *Quinn* and *Haben* which established that the common law makes fraternities and their members responsible for the consequences of requiring pledges to engage in dangerous conduct as part of the pledging process. That responsibility includes instances like this where pledges were urged to consume excessive and dangerous amounts of alcohol as part of a

hazing program which was a prerequisite to admission to the fraternity. *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 155 Ill.App.3d 231 (1987); *Haben v. Anderson*, 232 Ill.App.3d 260 (1992). Legal responsibility for illegal hazing is not dependent on the particular instrument used to haze the victim.

The appellate court affirmed the dismissal as to the two national fraternity defendants and the nonmember participants. App. at A43.

ARGUMENT

I. The national fraternity controlled pledging at the chapter level and knew the dangers presented when hazing is incorporated into pledging, and specifically encouraged the Mom and Dad's Night at issue here. Its conduct violated the public policy underlying the Hazing Act and made it legally responsible for injuries resulting from the hazing.

Standard of Review

Review of an order dismissing a cause of action under Section 2-615 is *de novo*. *Doe ex rel. Ortega-Piron v. Chicago Bd. of Educ.*, 213 Ill. 2d 19, 24, 820 N.E.2d 418, 421 (2004). The court accepts all well pleaded facts as true and draws all reasonable inferences in favor of the plaintiff. Dismissal of the complaint can be affirmed only if it appears that the plaintiff could not recover under any set of facts. *Platinum Partners Value Arbitrage Fund, Ltd. P'ship v. Chicago Board of Options Exchange*, 2012 IL App (1st) 112903, ¶12, 976 N.E.2d 415, 420-21. This standard of review applies to each of the two issues.

Argument

Responsibility for the consequences of illegal and life endangering fraternity hazing should extend upstream to all in the organization who enable, encourage, and ultimately benefit from hazing. Consequently, the appellate court erred when it declined to extend the duty to prevent and abstain from hazing to the defendant national fraternity.

A. The national fraternity is liable for the misconduct of its local chapter and members because the local members were agents of the national.

Although the appellate court found that the complaint's allegations showed a duty on the part of the local chapter and its members to the pledges, the court declined to extend that duty to the national fraternity. The court reasoned that as a matter of law, the national fraternity's rule against hazing meant its agents acted outside the scope of their agency when they conducted the hazing event which resulted in David Bogenberger's death. The court consequently concluded that the national fraternity was not legally responsible for the conduct of its members. *Bogenberger v. Pi Kappa Alpha Corp., Inc.*, 2016 IL App (1st) 150128, at ¶42; App. at A54.

However, we know the national fraternity did not view their chapter officers' hazing actions as outside the scope of their agency because its motion to dismiss did not rely on that ground. R. C2945 (v12) (national mot. to dismiss). The national fraternity's motion did not argue that its agents acted beyond the scope of their authority, nor did the circuit court point to that as a ground for its dismissal.

A principal's rule does not automatically shield it from liability for an agent's violation of that rule.

No case law gives a principal automatic immunity for an agent's conduct if the agent's conduct violates a rule enacted by that principal nor did the appellate court cite such a case. It relied only on *Adames v. Sheahan*, 233 Ill. 2d 276, 298, 909 N.E.2d 742, 754–55 (2009), where a sheriff's son

accidentally shot his friend with his father's service weapon. The agency issue was whether the sheriff was acting within the scope of his employment when he stored the weapon at home, in which case respondeat superior applied to the plaintiff's action against the Cook County Sheriff.

The court first noted that a principal can be liable for an agent's conduct even where the agent acted willfully or criminally. *Id.* at 298, 909 N.E.2d at 755. It ultimately found that the sheriff's deputy was not required to own a weapon or carry one while off duty or even while on duty. There was no connection between his job and having the weapon at home. Having a gun at home was for his personal purposes rather than being motivated by a desire to serve his employer. *Id.* at 303-04, 909 N.E.2d at 735-36. Under those particular facts, the deputy was not acting within the scope of his employment

Notably, the court acknowledged that summary judgment is generally inappropriate when the scope of employment is at issue. *Id.* at 305-06, 909 N.E.2d at 737. That guideline is even more appropriate in situations like this where the question is simply whether the complaint states a cause of action for conduct of an agent. That case had nothing to do with fraternity responsibilities and its facts are vividly different. More critically, it did not hold that an act by an agent that violates a principal's rule automatically falls outside the scope of the agency.

Such a rule would not make sense because as the *Adames* court recognized, determining the scope of an agent's authority requires weighing three different factors. *Id.* at 298-99. It is for that reason the Restatement specifically provides that even an act specifically forbidden by the employer may be within the scope of the employment. Restatement (Second) of Agency, §230. That rule is dispositive here and fatally undercuts the court's reasoning on this issue.

The national's rule was vitiated by its own conduct.

Even if that were not the law, the existence of a rule against hazing could not protect the principal where, as here, the rule was not only not enforced but the national deliberately disregarded its own rule. Plaintiff charged that despite the rule against hazing which the national fraternity held out for public consumption as its official policy, it instead encouraged pledge hazing events where pledges were required to consume dangerous levels of alcohol as a prerequisite to admission. The national did that because such events ultimately brought in revenue. App. at A14 (¶10). In fact, the national went even further. The fraternity told pledges that participation was a condition for membership, something the pledges believed carried a valued social status on their campus. App. at A21 (¶5).

The national's role in such events is seen in the actions of its employees who told chapter members that such nights were good for both pledge retention and member retention. They encouraged members to hold

such hazing events as part of the pledging process. App. at A4 (¶2). Defendants believed the event would improve the retention rate for pledges, which in turn would benefit the entire fraternity organization. App. at A6 (¶14). The national also encouraged local chapters to hold Greek Mom and Dad's Night functions because such events were believed to result in increased member retention as well. App. at A14 (¶10 (f)).

The fact that a principal had a rule barring some specific conduct like this hazing does not end an inquiry into whether the party enacting the rule is nonetheless responsible for that conduct where the principal does not enforce the rule or the rule is negated by the principal's actual conduct. *Hamrock v. Consolidated Rail Corp.*, 151 Ill.App.3d 55, 63-64, 501 N.E.2d 1274, 1279-80 (1986). There, a railroad rule barred certain conduct by its switchmen and conductors.

The railroad argued that its rule was dispositive of the worker's claim that working conditions caused his accident. The railroad reasoned that the worker was solely responsible for his injury, as a matter of law, because he was violating the rule when he was injured. However, the worker introduced evidence that the custom and practice there was to perform the task just as he was doing, contrary to the written rule. He argued that the railroad could be liable because it knew or should have known that the rule was being honored only in the breach.

The *Hamrock* court agreed that whether the rule or custom controlled in that situation was for the finder of fact. A custom and practice might well defeat the rule. The same reasoning applies here. Where the custom and practice of holding such pledge hazing events is not only known but encouraged by the national fraternity, the national's "rule" against such hazing should not shield them from legal responsibility for the consequences of such events. They should not be able to argue that their local agents acted beyond the scope of their authority when the national itself led local members to believe the rule against hazing was nothing more than window dressing.

The national fraternity knew of this event.

Plaintiff also emphasizes that this event was not localized or unique so that it might have been a variant from normal practices of members of Pi Kappa Alpha's national system, and thus not foreseeable at the national level. Plaintiff alleged this Mom and Dad's Night was sponsored by various chapters, with the plural showing this was a widespread national program and national problem. If plaintiff can prove a national problem, that would be even more evidence that the national fraternity was or should have been aware of the problem if it had made any reasonable effort to look at the functioning of their local chapters. App. at A4 (¶1). After all, as noted above, the national sent its representatives for week long on-site visits where the consultant's purpose was to investigate every aspect of the local operation.

If plaintiff can ultimately prove the national fraternity either encouraged or knew or should have known of this hazing event, the national would have had actual or constructive notice and the continuing use of this pledge event would be foreseeable to it. The latter type of notice is analogous to the constructive notice that occurs when a foreign object is on a store's floor for sufficient time to give management notice of its presence. *Donoho v. O'Connell's, Inc.*, 13 Ill. 2d 113, 118, 148 N.E.2d 434, 437 (1958).

Here, as noted, the national sends its investigators on week long visits. App. at A11 (¶3). It is difficult to believe an event like this could escape their notice. After all, the national fraternity's consultants would have been checking for hazing because they knew hazing and especially hazing in fraternities continues to be a serious community issue. That is common knowledge. See, e.g., *National Hazing Prevention Week Resource and Planning Guide*, hazingprevention.org, with a summary description of the problem at 13 (last visited 11/30/16). In fact, the national partnered with Hazing Prevention Org. Www.pikes.org/health-and-safety/anti-hazing.

In these circumstance, claiming lack of knowledge of their agents' conduct is the equivalent of looking but not seeing, described in automobile litigation. *Mort v. Walter*, 98 Ill. 2d 391, 398, 457 N.E.2d 18, 22 (1983). In that situation, not looking is not an excuse for not seeing or not knowing. It is the equivalent of winking at something illegal, as where police officers wink at illegal gambling by pretending not to notice it. Application of that

concept is particularly appropriate in a scenario like this where the matter is still at the pleading stage. The court should consider that plaintiff was denied further discovery. That in turn would have led to more specific information about what the national knew or should have known about the behavior of its agents and when it should have known.

The fraternity's agents acted within the scope of their authority.

Further, the members acted within the scope of their authority, or at a minimum the complaint's allegations showed there will be a question of fact in that regard. An agent acts within the scope of their authority if he or she is engaged in an activity assigned by the principal or "is doing anything that may reasonably said to have been contemplated as a part of that activity which benefits the principal. It is not necessary that an act or failure to act must have been expressly authorized by the principal". IPI 50.06.

The agent's authority may be determined by what persons of reasonable prudence ordinarily familiar with business practices and dealing with the agent might rightfully believe him to have on the basis of the principal's conduct. *Elmore v. Blume*, 31 Ill. App. 3d 643, 647, 334 N.E.2d 431, 434 (1975). Another court summarized the rule more simply. The question is whether the purported agent was doing what he or she was employed to do or was instead engaged in a personal frolic. *City of Champaign v. Torres*, 346 Ill. App. 3d 214, 217, 803 N.E.2d 971, 973–74 (2004) (analyzing a police officer's actions).

At least one court has addressed the specific scope issue here, agreeing that fraternity members carrying out the pledging process acted within the scope of their authority. *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (Ct.App.1986). The local fraternity there held what the court termed an informal initiation party called hell night to conclude hell week. *Id.* at 132, 352 S.E.2d at 491. Like this case, pledge attendance was mandatory. The court noted you could become a fraternity member only by joining a local chapter, the local chapters initiated new members, and by initiating new members the local chapter was accomplishing the purpose of the national fraternity. In fact, the court pointed out that introduction of new members is the lifeblood of such organizations. The court consequently held that members acted within the scope of their authority when they conducted hazing which led to a pledge's death from alcohol induced aspiration. *Id.*, at 152-53, 352 S.E.2d at 496.

Here, plaintiff alleged that the pledging event, including its hazing component, was carried out by local members as part of a pledging process controlled exclusively by the national fraternity for its benefit and as part of the national's business plan. Everyone involved believed hazing was good for pledge retention and even member retention, and that in turn would increase the national's dues income. In that scenario, how could it be said that local fraternity members were not acting as agents of the national. They were surely not engaged in a personal frolic, at least not as a matter of law. The

situation is somewhat analogous to that in *Lawlor v. N. Am. Corp. of Illinois*, 2012 IL 112530, ¶ 46, 983 N.E.2d 414, 428.

In *Lawlor*, there was no direct evidence the defendant knew its investigators would use improper means to obtain phone records. The court nonetheless said a jury could reasonably infer the defendant knew improper means would be used when it assigned the task to the investigators because it knew or should have known the method used by the investigators was the likely means for obtaining the records. Here, a jury could infer that the national knew or should have known its local members would use a method of pledge recruiting endorsed or at least tolerated by the national to fulfill the goal of obtaining new members imposed on the local by the national.

Because the members were carrying out the national's goal, they acted within the scope of their authority. The allegations were thus sufficient to show that the national fraternity is potentially legally responsible for the misconduct of its local chapter and its members. The court erred when it held that the fraternity members acted outside the scope of their authority.

Contrary authority ignores the ready foreseeability of hazing and its consequences.

There is contrary authority as to liability on the part of a national fraternity for the conduct of its members, but close reading of such cases shows they run contrary to the thread of responsibility found in similar Illinois agency cases. *Colangelo v. Tau Kappa Epsilon Fraternity*, 205 Mich.App. 129, 517 N.W.2d 289 (1994) reflects the attitude underlying such

pro-fraternity rulings. There two persons left a fraternity party drunk, driving separate cars, each of which struck the same pedestrian. The court does not specifically say whether the two drivers were members but appears to have assumed that fact. The plaintiff claimed the national fraternity had a duty to supervise the members for the protection of third parties.

The case is readily distinguishable because there was no issue about pledging or mandated drinking. However, the court's statements in its analysis are instructive because they exemplify the attitude exhibited by courts which have reacted negatively to hazing claims. Their reasoning demonstrates the logical pitfalls in the arguments against imposing a duty on the national.

The *Colangelo* court first said it was "questionable" whether it is foreseeable that an underage person would drink to excess at a fraternity party and drive away. *Id.*, at 133, 517 N.W.2d at 201. It did not think a national fraternity could foresee that "sequence of events". That view is remarkably obtuse. Simply reading the many fraternity party injury cases, brought under various theories, would have shown that court what has always been obvious to the rest of the world. As Hazing Prevent Org stresses, the risk of such conduct is constant and high.

That court did agree the "degree of certainty of harm is unquestionably high", but remarkably concluded that the risk of harm would not be changed if it placed a duty on the national for the conduct of its members. *Id.* at 133-

34, 517 N.W.2d at 291. It essentially reasoned that national fraternities would ignore a duty imposed on them by the law. That is not logical.

Then, in a "moral blame" analysis, the *Colangelo* court concluded the national fraternity owed no duty because it was the least blameworthy. The court at one point did recognize the obvious when it agreed that holding the national fraternity liable would be a good thing because it would prevent future harm (contrary to its immediate prior reasoning set out above). *Id.* at 135, 517 N.W.2d at 292. Finally, it said imposing a duty on the national would require it to maintain continuous contact with each chapter to check daily activities. That is a good example of a misuse of reductio ad absurdum because all that the law would require of the national would be a reasonable effort to control and direct the local. No one would expect it to check daily.

That case makes an easy target because it did not contain allegations of hazing or direct national involvement, but plaintiff points to it for its instructive value. The court will find many of those same exaggerations in other cases antagonistic toward claims against national fraternities for injuries caused by their members during hazing events.

B. The national fraternity is directly liable for endorsing and encouraging pledge hazing.

Plaintiff also alleged the national fraternity was directly liable for its affirmative conduct in encouraging hazing and failing to properly control its local chapter. The appellate court declined to find any duty on the national fraternity for its direct conduct. Opinion at ¶¶45-47; App. at A54-A55.

The court implicitly accepted that the national fraternity could foresee both pledge hazing and its consequences. And the court did not quarrel with the likelihood of injury if no duty was imposed, presumably because the likelihood of injury from hazing is obvious. That is why at least 44 states have laws barring hazing. Hazingprevention.umd.edu/HazingPrevention/HazingStatistics.aspx, citing Alfred University Study, Drs. Pollard and Allen, et al., (1999).

However, the court ruled that the national fraternity's rules did not establish control over its members because the rules did not show the national had direct supervisory authority over how its agents accomplished their tasks. Op. at ¶46; App. at A55. The court said the national did not have the right to control the activities used by local chapters during the pledging process. The court concluded that without such specific control, it would be unduly burdensome to place a duty on the national fraternity. Op. at ¶47; App. at A55.

Plaintiff disagrees with the finding that the national fraternity lacked sufficient control over its local chapters, but more importantly points out that such control is not even a factor in determining the sufficiency of a direct liability claim against the national. The appellate court erred when it used control as a criterion for determining whether to impose a duty for direct negligent conduct. As noted, it said lack of control meant the national would be unduly burdened. The court incorrectly used a "test of agency" to examine

the national's right of control and wrongly relied solely on an agency based case for its rejection of a duty for the national's direct misconduct. *Id.* at ¶46, citing *Anderson v. Boy Scouts of Am., Inc.*, 226 Ill. App. 3d 440, 443–45, 589 N.E.2d 892, 894–95 (1992), a case expressly limited to vicarious liability. Control is not the relevant test where a party's own conduct is alleged to have caused injury.

The relevant question in direct negligence is whether the allegations could reasonably lead a jury to conclude that the national fraternity encouraged and ratified the Mom and Dad's Night pledge hazing event. Courts have not hesitated to place a duty on national fraternities to refrain from encouraging and directing local chapters to engage in hazing. The direct liability scenario against the national here is similar to the situation addressed in *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 146, 352 S.E.2d 488, 492-93 (Ct.App.1986), cited above. There, a jury returned a verdict for the plaintiff and against the national organization in very similar circumstances involving hazing, even where the conduct was not subject to an antihazing law as in Illinois. The reviewing court had no difficulty in finding a jury question as to whether the national fraternity acted negligently.

The separate agency based claim was dealt with above. This other part of plaintiff's claim is premised on the national's direct involvement in pledging and its implicit encouragement of hazing. It is analogous to the corporate conduct at issue in *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274,

290, 864 N.E.2d 227, 237 (2007). This Court there found that a parent corporation could be directly liable for a subsidiary corporation's safety deficiencies where national mismanagement of the subsidiary's budget, accompanied by negligent direction, led to workplace injuries.

Here, the national fraternity runs a national operation, retaining control over all the elements of its college oriented "business". The national organizes and promotes membership in local chapters like Eta Nu and regulates them. App. at A5 (¶1), A11 (¶4). It promotes and recruits members for all its chapters. App. at A9 (¶1). The national directs the local chapters to initiate pledges into the Pi Kappa Alpha organization. App. at A12 (¶5). It requires local chapters to adhere to the fraternity constitution, the fraternity risk assessment policy, and the fraternity pledge manual. App. at A10 (¶1). It also has authority to control local chapters because it has the power to expel or discipline chapters for violating national fraternity rules, and that extends so far as to prohibit pledging activity. App. at A10 (¶2).

To gain information as well as guide and assess its local chapters' activities and operations, the national annually sends its chapter consultants on week long visits to each chapter. App. at A11 (¶3). The consultants analyze chapter recruitment performance and risk awareness education. *Id.* As a result of such reports, the national knew the Eta Nu chapter had no continuing risk education program or any risk awareness program. *Id.* Their consultants advised the national that Eta Nu had a reputation as a fraternity

of meatheads, information that should suggest this was just the kind of chapter which would take the implicitly approved hazing to an extreme. *Id.*

The national fraternity is supported by fees collected from local fraternity chapters, deriving seventy-five percent of national group income from undergraduate member dues. App. at A12 (¶5). Local chapters were aware their good standing with the national depended on continuing and increasing those dues. App. at A12 (¶5). The national was aware, by way of the chapter consultant, that Eta Nu for three years had not provided risk awareness education to its members and had no risk management committee or plan. App at A11 (¶3). The national's rules require the latter, at least on paper. The idea of risk awareness education is to ensure that members understand the restrictions against hazing and the risk of injury or death from hazing, and presumably to show members that the national meant what it said by its rules against alcohol and hazing.

Plaintiff's complaint described a national organization that was in full control of local chapters, knew or should have known this kind of alcohol-based Mom and Dad's Night hazing was an ongoing problem, and yet not only allowed but encouraged it. Because of that direct action, the national violated the duty it owed to its pledges.

The court below also performed the traditional duty analysis to determine whether the national fraternity's own conduct violated a duty owed to its pledges. However, in doing that, the court overlooked that the

legislature already imposed such a duty. The Hazing Act provides that a person commits hazing when he or she knowingly requires any harmful act by a college student for the purpose of admission into an organization associated with that institution. 720 ILCS 5/12C-50, formerly 720 ILCS 120/5. The legislature considered such conduct sufficiently serious to make it a felony offense if it results in great bodily harm or death, as occurred here. 720 ILCS 5/12C-50. The legislature presumably created sanctions because it recognized that the special factors at play in such scenarios satisfied the parameters for finding a duty on the part of all involved.

The complaint's allegations show a duty on the part of the national under the traditional duty analysis. To determine whether to impose civil liability, courts look to foreseeability, the likelihood of injury, the magnitude of the burden of guarding against the injury, and the consequences of placing the burden on the defendant. *Quinn, supra*, at 235, 507 N.E.2d at 1196, citing *Lance v. Senior*, 36 Ill.2d 516, 224 N.E.2d 231 (1967).

Foreseeability is obvious. This type of incident, where pledges suffer injury as the result of coerced physical conduct, has been a historic problem for fraternities and sororities. For example, see *The Dark Power of Fraternities*, Caitlin Flanagan, *The Atlantic*, March 2014; theatlantic.comfeatures/archive/2014/02/the-dark-power-of-fraternities/357580 (last visited 7/17/15); R. C3968 (describing nationwide problems at a large fraternity). Consequently, no national fraternity could

reasonably claim that hazing by its local chapter during the pledging process was not foreseeable, especially in light of the allegations that the national initiated the hazing by promoting Mom and Dad's Night as an effective recruiting tool. Indeed, no defendant contested such foreseeability.

As to the likelihood of injury, coercing consumption of alcohol at potentially fatal levels is surely likely to lead to injury, thus satisfying that criteria. The various cases cited below by both sides were all filed precisely because of the life threatening impact of such extreme conduct by a local chapter and fraternity members.

As to the third factor or criteria, no real burden can result from requiring a national fraternity and its members to refrain from and guard against hazing because such a rule would simply require them to obey the law. Obeying the law can never be a burden, much less an unreasonable one.

The court below cited *Rabel* for the proposition that imposing a duty would be unrealistic where the national did not have the ability to control day to day fraternity activities. Opinion at ¶47, citing *Rabel v. Illinois Wesleyan University*, 161 Ill.App.3d 348, 360-61, 514 N.E.2d 552, 560-61 (1987). However, that case is not apposite because that court addressed only a claim against the school, not the national fraternity. The defendant university exercised none of the aspects of control alleged in this case. Neither was there any allegation that the school implicitly sanctioned and

encouraged hazing for its benefit, again unlike the allegations against the national fraternity here.

Rabel is also distinguishable because the plaintiff alleged the school should have protected her,[2] whereas plaintiff here alleges the national fraternity directly caused the injury. It is also telling that the *Rabel* court was addressing only a claim against the school because the national fraternity had settled the hazing claim against it. Although the opinion does not specifically state the outcome of the national fraternity's motion to dismiss the claim against it, it appears the trial court must have denied that motion because otherwise there would have been no claim for the national fraternity to settle.

Finally, as to the fourth criteria, the only consequence of finding a duty on the part of the national not to haze underclassmen pledges with alcohol would be to save lives and preserve the dignity of the institutions involved. That is not an adverse consequence.

In closing this point, plaintiff points out that the *Haben* court presciently noted, albeit it in a different context, that the Hazing Act does not differentiate between individual members and the organization itself. *Haben v. Anderson*, 232 Ill. App. 3d 260, 267, 597 N.E.2d 655, 659-60 (1992). Here, the organization in reality consists of the local chapters and the national

[2] A fraternity pledge physically picked the plaintiff up and carried her as part of a hazing event, and she was seriously injured when the pledge tripped and fell.

fraternity, and logically all of them should equally bear legal responsibility for their misconduct.

II. Plaintiff's complaint stated a cause of action against the nonmember sorority women participating in the hazing. The court erred when it ruled that nonmembers did not owe a duty because they were not part of the process of determining whether pledges would be invited to become members.

The court below declined to find a duty as to the nonmember sorority women participating in the hazing only because they did not have authority to determine who would become fraternity members. Opinion at ¶48; App. at A55. If nonmembers did not vote on pledge membership, the court asked how they were in position to require pledges to drink to intoxication as a prerequisite to membership. It noted that it found no language in *Haben* or *Quinn* extending the duty to this class of persons, but of course there was no such language there because this issue was not raised in either of those cases.

As explained in the Facts, fraternity members recruited women from local sororities to help carry out the Mom and Dad's Night hazing event. App. at A31-A32 (¶1), A33 (¶6). The nonmember participation was not unwitting; they knew this was a pledge event and knew the goal was to make the pledges drink until they were intoxicated. They were active participants, not bystanders, in that they asked questions and encouraged drinking. Their conduct included hectoring and humiliating the pledges, all designed to coerce the pledges to drink the alcohol poured by these very defendants. The sorority members also knew participation was a prerequisite to fraternity

membership. App. at A32 (¶3). The only distinction from the other defendants was that these defendants were not fraternity members.

The latter is a distinction without a difference. The Hazing Act's plain language is broad and its application is not limited to members. It penalizes the conduct of any "person" who commits hazing, without limitation on the nature of that person's status or reason for involvement in the hazing. The statute's only limitation is that hazing must occur in the context of an educational institution, as it did here, and that the purpose of the hazing was to secure admission into the group responsible for the hazing, again as was the case here.

As to what it means to "require" participation in the hazing, "require" has several definitions, many quite broad. Require means to simply ask or request, or to call for as suitable or appropriate. Webster's Third New International Dictionary. Thus, anyone urging a pledge to act dangerously as a part of hazing is knowingly requiring that person to perform some act for the purpose of admission to the group.

The Act does not say the person sued for hazing must also be a person entitled to vote on admission or that the putative defendant must personally know the act they are encouraging is a prerequisite for admission, although the latter was true here. Simply put, a person sued is potentially liable if he or she knowingly requires a dangerous act to be performed by someone seeking membership in a fraternity or sorority. That is what both members

and nonmembers did here when they participated in the event by specifically bullying the pledges to drink what defendants had to know were dangerous amounts of alcohol.

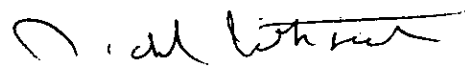
The scope of the Act can be illustrated by a hypothetical where only the fraternity officers tell a pledge that certain conduct is required for admission and then tell other members to carry out that hazing. In that scenario, could the members carrying out the hazing avoid liability by arguing that although they knowingly required the pledges to perform the dangerous conduct, they did not know the conduct was a prerequisite to admission? Surely if the legislature intended such a limitation, it would have said so.

In addressing the scope of the Hazing Act, the overriding rule is that courts are to give effect to the statute's plain language. *Murray v. Chicago Youth Center*, 224 Ill.2d 213, 864 N.E.2d 176, 189 (2007). The legislative intent should be sought primarily from the language used in the statute. *Bonaguro v. County Officers Electoral Board*, 158 Ill.2d 391, 397, 634 N.E.2d 712, 714 (1994). There is no language in this statute exempting from its reach any particular class of persons participating in the hazing, including nonmembers, or any language requiring that a defendant must be a member of the organization. Consequently, the court erred when it determined that nonmembers owed no duty to the pledges.

CONCLUSION

For the reasons stated, plaintiff Gary Bogenberger, as special administrator of the estate of David Bogenberger, deceased, requests that the part of the opinion below affirming the dismissal of national organizations Pi Kappa Alpha International Fraternity and Pi Kappa Alpha Corporation and the nonmember participants be reversed and that this matter be remanded for further proceedings. In the alternative, plaintiff requests that those parts of the order and judgment be vacated and that the matter be remanded for further discovery before motions to dismiss are considered.

Respectfully submitted,



Michael W. Rathsack
Attorney for Gary Bogenberger, administrator of the estate of David Bogenberger, deceased

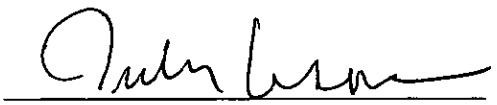
10 South LaSalle St. · 1420
Chicago, Illinois 60603
(312) 726-5433
mrathsack@rathsack.net

Of counsel:

Peter R. Coladarci
and
Michael W. Rathsack

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 8,606 words.



Michael W. Rathsack

MICHAEL W. RATHSACK
10 South LaSalle St. - 1420
Chicago, Illinois 60603
(312) 726-5433
mrathsack@rathsack.net

APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

GARY L. BOGENBERGER, as Special Administrator of the Estate of DAVID R. BOGENBERGER, deceased,	)	
Plaintiff,	)	
vs.	)	No. 2013 L 001616
PI KAPPA ALPHA CORPORATION, Inc., A Foreign Corporation, PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS, an Un-Incorporated Association, ALEXANDER M. JANDICK, individually and as an Officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, JAMES P. HARVEY, individually and as an Officer of PI KAPPA ALPHA ETA NU Chapter, OMAR SALAMEH, individually and as an Officer of PI KAPPA ALPHA ETA NU Chapter, PATRICK W. MERRILL, individually and as an Officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, STEVEN A. LIBERT, individually and as an Officer of PI KAPPA ALPHA ETA NU Chapter, JOHN HUTCHINSON, individually And as Officer of PI KAPPA ETA NU Chapter, DANIEL BIAGINI, individually and as an Officer of PI KAPPA ETA NU Chapter, MICHAEL J. PHILLIP, Jr., THOMAS F. COSTELLO, DAVID R. SAILER, ALEXANDER D. RENN, MICHAEL A. MARROQUIN, ESTEFAN A. DIAZ, HAZEL A. VERGARALOPE.	)	

A1

MICHAEL D. PFEST, ANDRES J. JIMENEZ, Jr., ISAIAH LOTT, ANDREW W. BOULEANU, NICHOLAS A. SUTOR, NELSON A. IRIZARRY, JOHNNY P. WALLACE, DANIEL S. POST, NSENZI K. SALASINI, RUSSELL P. COYNER, GREGORY PETRYKA, KEVIN ROSSETTI, THOMAS BRALIS, ALYSSA ALLEGRETTI, JESSICA ANDERS, KELLY BURBACK, CHRISTINA CARRISA, RAQUEL CHAVEZ, LINDSEY FRANK, DANIELLE GLENNON, KRISTINA KUNZ, JANET LUNA, NICHOLE MINNICK, COURTNEY ODENTHAL, LOGAN REDFIELD, KATIE REPORTO, TIFFANY SCHEINFURTH, ADRIANNA SOTELO, PRUDENCE WILLRET, KARRISA AZARELA, MEGAN LEDONE, NICHOLE MANFREDINI, JILLIAN MERRIL, MONICA SKOWRON and PIKE ALUM, L.L.C.,

Defendants.

FIFTH AMENDED COMPLAINT

Plaintiff GARY L. BOGENBERGER, as Special Administrator of the Estate of David R. Bogenberger, deceased, complaining of defendants PI KAPPA ALPHA CORPORATION, INC. a Foreign Corporation, PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, a Voluntary Unincorporated Association (also known as "Pi Kappa Eta Nu") (collectively "Pi Kappa Alpha fraternity"), ALEXANDER M. JANDICK, individually and as an Officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS

UNIVERSITY, JAMES P. HARVEY, individually and as an Officer of PI KAPPA ALPHA ETTA NU Chapter, OMAR SALAMEH, individually and as an Officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, PATRICK W. MERRILL, individually and as an Officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, STEVEN A LIBERT, individually and as an Officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, JOHN HUTCHINSON, individually and as an Officer of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, DANIEL BIAGINI, individually and as Officer of PI KAPPA ALPHA ETTA NU Chapter, MICHAEL J. PHILLIP, Jr., THOMAS F. COSTELLO, DAVID R. SAILER, ALEXANDER D. RENN, MICHAEL A. MARROQUIN, ESTEFAN A. DIAZ, HAZEL A. VERGARALOPE, MICHAEL D. PFEST, ANDRES JIMENEZ, Jr., ISAIAH LOTT, ANDREW W. BOULEANU, NICHOLAS A. SUTOR, NELSON A. IRIZARRY, JOHNNY P. WALLACE, DANIEL S. POST, NSENZI K. SALASINI and RUSSELL P. COYNER, GREGORY PETRYKA, KEVIN ROSETTI, THOMAS BRALIS, ALYSSA ALLEGRETTI, JESSICA ANDERS, KELLY BURBACK, CHRISTINA CARRISA, RAQUEL CHAVEZ, LINDSEY FRANK, DANIELLE GLENNON, KRISTINNA KUNZ, JANET LUNA, NICHOLE MINNICK, COURTNEY ODENTHAL, LOGAN REDFIELD, KATIE REPORTO, TIFFANY SCHEINFURTH, ADRIANNA SOTELO, PRUDENCE WILLRET, KARISSA AZARELA, MEGAN LEDONE, NICHOLE MANFREDINI, JILLIAN MERRIL, MONICA SKOWRON and PIKE ALUM, LLC, states:

A3

STATEMENT OF FACTS

1. "Mom and Dad's Night", also known as "Greek Family Night, is a common fraternity pledging activity practiced in the same or similar forms by chapters of the Pi Kappa Alpha organization and other fraternities and sororities throughout the country;

2. Upon information and belief, presently unknown employees or agents of Pi Kappa Alpha Corporation, Inc., and/or Pi Kappa Alpha International Fraternity told presently unknown officers and/or active members of the Eta Nu Chapter of Pi Kappa Alpha at Northern Illinois University that "Greek Family Nights" were "good for pledge and member retention", and thus encouraged officers and members of Eta Nu to hold such events as a part of Eta Nu's pledging process.

3. "Pledging" in the context of fraternity membership are a series of events occurring over several weeks calculated to familiarize active members of the fraternity with potential new members, commonly known as "pledges", before voting whether each pledge would be accepted and initated into the fraternity.

4. Upon information and blief ,on October 29 or 30, 2012 presently unknown executive fraternity officers, members of the Pledge Board and active fraternity members of Pi Kappa Alpha Eta Nu at Northern Illinois University, DeKalb, Illinois met and approved and adopted a plan for a "Mom and Dad's Night" pledge event to be held at the Pi Kappa Alpha Eta Nu fraternity house on Thursday, November 1, 2012;

5. The plan designated seven rooms in the fraternity house to which two or three "Greek Couples" would be assigned to ask pledges various questions and gave the required

alcohol;

6. The plan called for the pledges to be divided into approximately seven groups of two or three pledges to be rotated from room to room every ten minutes;

7. The plan also called for most if not all of the pledges would become unconscious and that certain areas of the fraternity were designated as place to put insensate pledges;

8. Further, it was called for such insensate pledges would be checked periodically and that their heads and bodies would be placed and kept so that they would not choke on their vomit;

9. According to the plan for "Mom and Dad's Night", executive fraternity officers, active members and participating women would not have to drink alcohol during "Mom and Dad's Night";

10. Executive fraternity officers kept breathalyzers and used them to measure and monitor the blood alcohol content of the insensate pledges;

11. Upon information and belief ,pledges, including plaintiff's decedent David R. Bogenberger, were told by presently unknown executive officers of Pi Kappa Alpha Eta Nu, Pledge Board members, event planners and active members engaged in planning "Mom and Dad's Night" that attendance and participation was a mandatory pre-requisite to active membership in the fraternity and that they would be required to drink excessive amounts of alcohol during the event;

12. Pledges, including plaintiff's decedent David R. Bogenberger, were told by presently unknown executive officers, Pledge Board members and active fraternity members to dress formally and report to the fraternity house at 7:30 PM on November 1, 2012;

13. The pledges including plaintiff's decedent David R. Bogenberger, were told by presently unknown executive officers, Pledge Board members and active fraternity members that the purpose of "Mom and Dad's Night" was to learn who each pledge's Greek Mother and Father were, and to encourage the development of mentoring relationships with them;

14. Upon information and belief, executive officers of the fraternity, pledge board members, event planners and active fraternity members felt that "Mom and Dad's Night" would improve the fraternity's retention of pledges as active members, thereby benefitting the entire Pi Kappa Alpha organization through increased income from member dues;

15. Upon information and belief, at the October 29 or 30, 2012 Eta Nu fraternity meeting where the "Mom and Dad's Night" was announced, approved and adopted, presently unknown executive fraternity officers, pledge board members and event planners sought volunteers from among active fraternity members for use of their rooms at the fraternity house for "Mom and Dad's Night" and assigned two or three active members to each room;

16. Executive fraternity officers, pledge board members and event planners directed active members to obtain vodka for the pledges to consume during the event and to contact sorority women to serve as "Greek Mothers" for the event;

17. At the October 29 or 30, 2012 planning meeting each active member participating in "Mom and Dad's Night" selected a pledge for whom he and the designated woman who would serve as the pledge's "Greek Mother and Father";

18. On November 1, 2012 at approximately 7:30 PM the pledges, including plaintiff's decedent David R. Bogenberger, arrived at the fraternity house, and were divided into groups of two or three and given a list of rooms in the fraternity house to which they were to proceed, in a

designated order, for ten minutes in each room;

19. Each pledge was given a 4 ounce plastic cup by executive fraternity officers, pledge board members and event planners which he brought from room to room where it was filled with vodka by the active members and women in each room for the pledges to consume as determined and required by the active members and women there;

20. Upon information and belief, in each room the pledges were asked questions by active members and women participants and they then tried to determine whether the active members and women in the particular room were their Greek parents;

21. Upon information and belief, in each room the pledges were directed and required to consume and given vodka based on the pledge's responses to the questions they were asked by the active members and women in each room;

22. Upon information and belief, in each room, the pledges were asked nonsensical and personal questions including involving the pledge's sexual history and preferences by active member and women participants, to which each pledge responded and was then required and directed to drink from his 4 ounce glass of vodka;

23. Pledges expressing a reluctance to drink as directed and determined by the active members and women participants were called "pussies" and "bitches" by active members and women participating in "Mom and Dad's Night" until they assented;

24. When pledges asked a Greek couple whether they were his Greek parents, they were told they were not, even when they were, and were then required to drink another 4 ounce glass of vodka;

25. Upon information and belief, each pledge, including plaintiff's decedent David R.

Bogenberger. believed that attending and participating in "Mom and Dad's Night", and particularly drinking as direct and to excess as directed by active members and women participants was a required condition to being elected and initiated into membership of the Pi Kappa Alpha fraternity.

26. Upon information and belief, at the conclusion of the progression through the seven designated rooms, each pledge, including plaintiff's decedent David R. Bogenberger, had consumed 3 to 5 glasses of vodka in each room in approximately an hour and a half;

27. The pledges were then, with assistance from presently unknown active members and participating women because they were no longer able to walk on their own, taken to the basement of the fraternity house where they were told the identity of their Greek parents and were given customized t-shirts, paddles and buckets, decorated by the women participants, to vomit in;

28. The pledges also vomited on themselves, each other, in rooms and on hallway floors;

29. As the pledges began to lose consciousness, they were placed in various previously designated places in the fraternity house by presently unknown active members, including on the kitchen and hallway floors;

30. Upon information and belief, Plaintiff's decedent was placed in a bed in his Greek father's room by active member defendant Gregory Petryka who tried to orient his head and body so that if he vomited, he would not choke on it;

31. At approximately 11:00 PM November 1, 2012, executive officers defendants Alexander M. Jandick (President of the Eta Nu Chapter) and Patrick W. Merrill of the fraternity

sent a mass text to other officers and active members which read: "[I]f you or any girl you know has a pic or vid of a passed out pledge delete it immediately. Just do it. From Jandick";

32. Upon information and belief, after the pledges had become unconscious and had been placed in the designated areas, as called for by their plan, presently unknown fraternity officers and active members checked occasionally on the pledges, including plaintiff's decedent, adjusting the position of the pledges' head and body so that if he vomited he would not choke;

33. Upon information and belief, after the pledges had become unconscious and had been placed in designated areas, presently unknown fraternity officers and active members discussed among themselves whether to call an ambulance or obtain medical attention for the unconscious pledges, but decided not to, and further they told others not to call 911 or seek medical care for insensate pledges;

34. Contrary to Northern Illinois University policies on parties where alcohol was to be served at fraternities and sororities, "Mom and Dad's Night" had not been registered with the Student Involvement and Leadership Development or otherwise sanctioned by the University.

COUNT I

1. On November 1, 2012, and at all material times hereto, defendant PI KAPPA ALPHA CORPORATION, INC. was a foreign corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, was an Unincorporated Association, both engaged in the business of organizing, promoting, and recruiting membership in local Pi Kappa Alpha chapter fraternities and the national Pi Kappa Alpha organization, including the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS

UNIVERSITY, in DeKalb, Illinois; and, as further part of their business, supervised, advised required and controlled the activities and conduct of its local Pi Kappa Alpha chapter fraternities, including the Pi Kappa Eta Nu; including specifically binding, mandatory and required adherence to the fraternity Consitiution, Risk Assessment Manual Chapter Codes and its quarterly publication *The Shield and Diamond* and *TheGarnet and Gold* pledge manual., which among other things required pledges to have a minimum high school grade point average of 2.5, prohibited pledges from wearing pledge pins of another fraternity until he is initiated, required a two-thirds of active members of thelocal fraternity to accept a pledge as a member, established a Hazing Policy ("No chapter, colony, student or alumnus shall conduct nor condone hazing activities, defined as 'Any action taken or situtatioin created, intentionally, whether on or off fraternity premises, to produce mental or physical discomfort, embarrassment, harassment, or riducle. Such activities may include, but are not limited to the following: Use of alcohol. . . .; directed local chapters to employ certain recruiting techniques, limited and control the use of fraternity symbols and logos.

2. Through the fraternity Constitution, Chapter Codes, Risk Assessment Manual and publications such as *The Garnet and Gold* and *The Shield and Diamond* defendants PI KAPPA ALPHA, INC., a foreign corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, had the right and the power to expel, suspend or place restrictive remedial conditions on continued operations of local chapters without notice or proof of a violation of any standard, law or rule, and particularly reserved the right and power to assist local chapters in the conduct of rush or pledging activities or require alcohol or hazing education; and further, through the same sources, had the right and power to expel, suspend or

place individual members of local chapters on "alumni status" without notice or proof of a violation of any standard. law or rule; further, . PI KAPPA ALPHA, INC., a foreign corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association had the right power and authority to ban and prohibit pledging activities outright at local chapters, including Eta Nu at Northern Illinois.

3. Through annual Chapter Consultant on site week long assessments of each local operations sought and obtained detailed, granular knowledge about the conduct and operations of local chapters, preparing detailed Chapter Consultant Reports analyzing each chapters' recruitment performance, continuing risk awarness education, alumni relations, finacnces, housing, management, athletics. scholarship. campus involvement, community service, public relations; in particular, defendants PI KAPPA ALPHA, INC. and PI KAPPA ALPHA INTERNATIONAL FRATERNITY knew through its Chapter Consultant's reports that the ETA NU CHAPTER for at least three years before and on November 1, 2012 that ETA NU CHAPTER did not provide continuing risk education to members. did not have a risk awareness program, had no written crisis management plan and, upon information and belief, had no functioning risk management committee; and further defendants PI KAPPA ALPHA, INC. and PI KAPPA ALPHA INTERNATIONAL FRATERNITY knew, through their Consultant Reports that Eta Nu had a reputation, stigma and image on the Northern Illinois University campus as a fraternity of "meatheads" and recommended diversifying their activities on campus to develop a more positive image.

4.. On November 1, 2012, and at all material times hereto, defendant PI KAPPA ALPHA CORPORATION, INC., a Foreign Corporation, and PI KAPPA ALPHA

INTERNATIONAL FRATERNITY, an Unincorporated Association were present in and engaged in the business of organizing, promoting and recruiting membership in local Pi Kappa Alpha fraternities in Cook County, Illinois, including at Northwestern University in Evanston, Illinois.

5. On November 1, 2012, and at all material times hereto, defendant PI KAPPA ALPHA CORPORATION, INC., a Foreign Corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, were supported by fees collected by local fraternity chapters, including Pi Kappa Alpha Eta Nu, from fraternity members and prospective members or pledges; upon information and belief, defendants PI KAPPA ALPHA CORPORATION, INC., a foreign corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association derived at least 75% of its gross income from undergraduate dues and fees and were therefore acutely dependent on continued and increasing such dues and fees; upon information and belief, officers and active members of Eta Nu Chapter knew and understood that their continued good standing status as a Pi Kappa Alpha chapter depended on continuing and increasing income to the PI KAPPA ALPHA CORPORATION, INC., a foreign corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association in the form of undergraduate dues and fees; further, PI KAPPA ALPHA CORPORATION, INC., a foreign corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, specifically authorized, directed, required and empowered its local fraternity chapters, including Pi Kappa Alpha Eta Nu to collect initiation and other fees from fraternity pledges and to initiate pledges into the Pi Kappa Alpha organization.

6. On November 1, 2012 and at all material times hereto, defendant PI KAPPA

ALPHA CORPORATION, INC. a Foreign Corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association conducted their business of organizing, promoting and recruiting membership in Pi Kappa Alpha fraternities and organization through, among others, ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, in DeKalb, Illinois.

7. On November 1, 2012, plaintiff's decedent David R. Bogenberger was a prospective member or pledge of the Pi Kappa Alpha fraternity, in DeKalb, Illinois and was and required by officers of the fraternity to participate in an initiation ritual at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house known as "Mom and Dad's Night" as a necessary condition and requirement to being accepted for membership in the Pi Kappa Alpha fraternity and organization, a valued status at Northern Illinois University.

8. Defendant PI KAPPA ALPHA INTERNATIONA FRATERNITY, INC., and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association owed plaintiff's decedent a duty to prevent the foreseeable consequences of required excessive consumption of alcohol during initiation ritual, including death.

9. On November 1, 2012, and at all material times hereto, there was in force and effect in the State of Illinois a certain statute which prohibits hazing, as when "a person commits hazing who knowingly requires the performance of any act by a student or other person in a school, college, university or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that

institution if (a) the act is not sanctioned or authorized by the educational institution and (b) the act results in bodily harm to any person." 720 ILCS 120/5.

10. On November 1, 2012, and at all material times hereto, defendants PI KAPPA ALPHA CORPORATION, INC., a Foreign Corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, committed one or more of the following negligent acts and omissions:

a. Permitted and allowed dangerous pledge events being undertaken by local Pi Kappa Alpha chapters, including Pi Kappa Alpha Eta Nu, which required excessive and dangerous consumption of alcohol to the point of insensate intoxication in violation of 720 ILCS 120/5;

b. Failed to warn local Pi Kappa Alpha chapters, including Pi Kappa Alpha Eta Nu, about the dangers and risks of required alcohol related pledge events, although it knew, or should have known such rituals are often fatal;

c. Failed to adopt reasonable and effective policies to be followed by its local fraternity chapters, including Pi Kappa Alpha Eta Nu, to prevent dangerous pledge events and activities involving excessive required and dangerous consumption of alcohol to the point of insensate intoxication;

d. Failed to take reasonable steps to insure its local chapters, including Pi Kappa Alpha Eta Nu, followed policies and procedures it claimed to have adopted regarding required pledge events and activities;

e. Failed to take reasonable steps to learn whether its local chapters, including Pi Kappa Alpha Eta Nu, were following policies and procedures limiting required initiations it claimed to have adopted;

f. Through its agents and employees encouraged local chapters, including Eta Nu, to hold events similar to "Mom and Dad's Night" because they were good for member and pledge retention, therefore increasing

revenue and income to the defendants through dues and fees;

g. Failed to ban pledging events and activities outright at all of its local chapters although they knew pledge events and activities were likely to result in bodily harm and death to fraternity pledges;

h. Although aware that the Eta Nu Chapter did not have a functioning continuing risk education program or committee for three or more years through annual inspections and audits by its Chapter Consultants, failed to take necessary and appropriate steps within its rights and powers to insure Eta Nu Chapter implemented a continuing risk education policy and functioning risk awareness committee;

i. Was otherwise careless and negligent.

11. As a direct and proximate result of one or more of the foregoing negligent acts or omissions, on November 1, 2012, plaintiff's decedent David R. Bogenberger was required to participate in a pledge event known as "Mom and Dad's Night" at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house during which plaintiff's decedent David R. Bogenberger was further required to drink dangerous and excessive amounts of alcohol by fraternity officers, active members and others so that his blood alcohol level reached .43 mg/dl, whereupon he lost consciousness, was placed on a bed in a room in the fraternity house designated for that purpose by fraternity members, and on the evening of November 1-2, 2012 died; whereby his estate suffered presumed substantial pecuniary damages within the meaning of the Illinois Wrongful Death Act (740 ILCS 180/1 et seq.), including loss of his society and support, grief to his family,

organizing, promoting and recruiting membership in Pi Kappa Alpha fraternities and organization through, among others: ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, in DeKalb, Illinois.

7. On November 1, 2012, plaintiff's decedent David R. Bogenberger was a prospective member or pledge of the Pi Kappa Alpha fraternity, in DeKalb, Illinois and was and required by officers of the fraternity to participate in an initiation ritual at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house known as "Mom and Dad's Night" as a necessary condition and requirement to being accepted for membership in the Pi Kappa Alpha fraternity and organization, a valued status at Northern Illinois University.

8. Defendant PI KAPPA ALPHA INTERNATIONA FRATERNITY, INC., and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association owed plaintiff's decedent a duty to prevent the foreseeable consequences of required excessive consumption of alcohol during initiation ritual, including death.

9. On November 1, 2012, and at all material times hereto, there was in force and effect in the State of Illinois a certain statute which prohibits hazing, as when "a person commits hazing who knowingly requires the performance of any act by a student or other person in a school, college, university or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution if (a) the act is not sanctioned or authorized by the educational institution and (b) the act results in bodily harm to any person." 720 ILCS 120/5.

10. On November 1, 2012, and at all material times hereto, defendants PI KAPPA ALPHA CORPORATION, INC., a Foreign Corporation, and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, committed one or more of the following negligent acts and omissions:

a. Permitted and allowed dangerous pledge events being undertaken by local Pi Kappa Alpha chapters, including Pi Kappa Alpha Eta Nu, which required excessive and dangerous consumption of alcohol to the point of insensate intoxication in violation of 720 ILCS 120/5;

b. Failed to warn local Pi Kappa Alpha chapters, including Pi Kappa Alpha Eta Nu, about the dangers and risks of required alcohol related pledge events, although it knew, or should have known such rituals are often fatal;

c. Failed to adopt reasonable and effective policies to be followed by its local fraternity chapters, including Pi Kappa Alpha Eta Nu, to prevent dangerous pledge events and activities involving excessive required and dangerous consumption of alcohol to the point of insensate intoxication;

d. Failed to take reasonable steps to insure its local chapters, including Pi Kappa Alpha Eta Nu, followed policies and procedures it claimed to have adopted regarding required pledge events and activities;

e. Failed to take reasonable steps to learn whether its local chapters, including Pi Kappa Alpha Eta Nu, were following policies and procedures limiting required initiations it claimed to have adopted;

f. Through its agents and employees encouraged local chapters, including Eta Nu, to hold events similar to "Mom and Dad's Night" because they were good for member and pledge retention, therefore increasing revenue and income to the defendants through dues and fees;

g. Failed to ban pledging events and activities outright at

all of its local chapters although they knew pledge events and activities were likely to result in bodily harm and death to fraternity pledges;

h. Although aware that the Eta Nu Chapter did not have a functioning continuing risk education program or committee for three or more years through annual inspections and audits by its Chapter Consultants, failed to take necessary and appropriate steps within its rights and powers to insure Eta Nu Chapter implemented a continuing risk education policy and functioning risk awareness committee;

i. Was otherwise careless and negligent.

11. As a direct and proximate result of one or more of the foregoing negligent acts or omissions, on November 1, 2012, plaintiff's decedent David R. Bogenberger was directed to participate in a required initiation ritual known to as "Mom's and Dad's Night" at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house during which plaintiff's decedent David R. Bogenberger was given, told, and required to drink dangerous and excessive amounts of alcohol by fraternity officers, active members and others so that his blood alcohol level reached .43 mg/dl, whereupon he lost consciousness, was placed on a bed in a room in the fraternity house designated for that purpose by fraternity members, and on the evening of November 1-2, 2012, died; and further, during the initiation event or ritual known as "Mom and Dad's Night" on November 1, 2012, plaintiff's decedent David R. Bogenberger suffered damages within the

meaning of the Illinois Survival Act (755 ILCS 5/27-6), including being made an object of ridicule, embarrassment and humiliation, pain and suffering.

12 Plaintiff Gary L. Bogenberger brings this count pursuant to the Illinois Survival Acts as an Independent Administrator on behalf of beneficiaries of the Estate of David R. Bogenberger, deceased, namely: Gary L. Bogenberger (father), Ruth A. Bogenberger (mother), Matthew C. Bogenberger (brother), Megan A. Bogenberger (sister), Alex J. Bogenberger (brother) and Amy R. Bogenberger (sister).

13. Plaintiff adopts and incorporates herein by reference the "Statement of Facts" pp.3-9, supra.

WHEREFORE, plaintiff respectfully requests this Court enter judgment in his favor and against the defendant PI KAPPA ALPHA CORPORATION, INC. a Foreign Corporation and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, for an amount in excess of One Hundred Thousand Dollars ($100,000.00), plus costs.

COUNT III

1. On November 1, 2012, and at all material times hereto defendant ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY was a voluntary unincorporated association and local chapter of PI KAPPA ALPHA CORPORATION, Inc., a foreign corporation, at Northern Illinois University in DeKalb, Illinois.

2. On November 1, 2012, and at all material times hereto, defendants ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL, STEPHEN A.

LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI were duly appointed or elected officers or Pledge Board members of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, and are sued under this count in their official capacities as officers of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY.

3. On November 1, 2012, and at all material times hereto, ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, was an agent of defendant PI KAPPA ALPHA CORPORATION, INC. a Foreign Corporation and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, in their business of organizing, promoting and recruiting membership in local chapters of PI KAPPA ALPHA fraternities, and was at all material times acting within the scope of its agency; further, PI KAPPA ALPHA CORPORATION, INC., a foreign corporation and PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, specifically authorized, directed, required and empowered its local fraternity chapters, including Pi Kappa Alpha Eta Nu to collect initiation and other fees from fraternity pledges and to initiate pledges into the Pi Kappa Alpha organization in required initiation rituals including "Mom and Dad's Night"; further, defendant ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY forward a designated portion of those fees and dues to defendant PI KAPPA ALPHA CORPORATION, INC.

4. On November 1, 2012 and at all material times hereto, PI KAPPA ALPHA CORPORATION, INC., a Foreign Corporation and PI KAPPA ALPHA INTERNATIONAL

FRATERNITY, an Unincorporated Association, were accountable and responsible as a principal for the acts and conduct of their agent ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, and its duly appointed or elected officers and those who planned and approved "Mom and Dad's Night".

5. On November 1, 2012, plaintiff's decedent David R. Bogenberger was a prospective member or pledge of the Pi Kappa Alpha fraternity, at Northern Illinois University in DeKalb, Illinois and, upon information and belief, was required, both directly and indirectly through adoption of the plan for "Mom and Dad's Night" ,by defendant fraternity officers and Pledge Board members ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL, STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI to participate in a pledge event at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house known as "Mom's and Dad's Night" as a condition to being accepted for membership in the Pi Kappa Alpha fraternity, a highly valued social status at Northern Illinois University

6. Defendants PI KAPPA ALPHA CORPORATION, Inc., a Foreign Corporation, PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL, STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI owed plaintiff's decedent a duty of reasonable care not to subject him during pledge activities and events to the foreseeable consequences of required excessive consumption

of alcohol to the point of insensate intoxication, . including death.

7. On November 1, 2012, and at all material times hereto, there was in force and effect in the State of Illinois a certain statute which prohibits hazing, as when "a person commits hazing who knowingly requires the performance of any act by a student or other person in a school, college, university or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution if (a) the act is not sanctioned or authorized by the educational institution and (b) the act results in bodily harm to any person." 720 ILCS 120/5.

8. On November 1, 2012, and at all material times hereto, defendants PI KAPPA ALPHA CORPORATION, Inc., a Foreign Corporation, PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, and ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL, STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI committed one or more of the following negligent acts and omissions:

a. Planned and promoted an initiation ritual or event known as "Mom and Dad's Night" in which fraternity pledges were required, as a condition of membership in the fraternity, to consume excessive and dangerous amounts of alcohol to a point of insensate intoxication in violation of 720 ILCS 120/5;

b. Required prospective fraternity members or pledges including plaintiff's decedent David R. Bogenberger to participate in an initiation ritual wherein, as a condition to membership in the fraternity, pledges were required to drink excessive and dangerous amounts of alcohol to a point of insensate

unincorporated association, PI KAPPA ALPHA CORPORATION, INC. a Foreign Corporation, PI KAPPA ALPHA INTERNATIONAL FRATERNITY, an Unincorporated Association, and ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL, STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI as duly appointed or elected officers or Pledge Board members of ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY, for an amount in excess of One Hundred Thousand Dollars ($100,000.00), plus costs.

COUNT V

1. Upon information and belief on and at presently unknown times prior to November 1, 2012, and at all other material times hereto, defendants ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH (a Cook County resident), PATRICK MERRILL, STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI knowingly and willing approved, organized, planned, promoted, required and participated in a pledge event at ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house at Northern Illinois University in DeKalb, Illinois known as "Mom and Dad's Night" during which fraternity pledges would be required to consume dangerous and excessive amounts of alcohol to a point of insensate intoxication as a condition to membership in Pi Kappa Alpha fraternity, a highly valued social status at Northern Illinois University.

2. On November 1, 2012, plaintiff's decedent David R. Bogenberger was a prospective member or pledge of the Pi Kappa Alpha fraternity at Northern Illinois University

and upon information and belief was required by officers of the fraternity to participate in a pledge event at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house known as "Mom and Dad's Night" as a condition to being accepted for membership in the Pi Kappa Alpha fraternity, a highly valued social status at Northern Illinois University.

3. Defendants ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL, STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI owed plaintiff's decedent a duty of reasonable care not to subject him to the foreseeable consequences of required excessive consumption of alcohol to the point of insensate intoxication, including death, during pledge events.

4. On November 1, 2012, and at all material times hereto, there was in force and effect in the State of Illinois a certain statute which prohibits hazing, as when "a person commits hazing who knowingly requires the performance of any act by a student or other person in a school, college, university or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution if (a) the act is not sanctioned or authorized by the educational institution and (b) the act results in bodily harm to any person." 720 ILCS 120/5.

5. On November 1, 2012, and at material times hereto, defendants ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL,STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI, upon knowledge and belief, acting knowingly and willingly in execution of an event they planned, approved, promoted, required

and participated in known as "Mom and Dad's Night", jointly and in concert, committed one or more of the following negligent acts and omissions:

a. Planned and promoted an initiation ritual or event known as "Mom's and Dad's Night" in which Pi Kappa Alpha fraternity pledges, including plaintiff's decedent were required, as a condition to membership in the fraternity, to consume excessive and dangerous amounts of alcohol to a point of insensate intoxication in violation of 720 ILCS 120/5;

b. As a part of the plan for "Mom and Dad's Night" designated certain rooms and areas in the Pi Kappa Alpha Eta Nu house to place pledges, including plaintiff's decedent, who became dangerously intoxicated and unconscious rather than obtain necessary medical attention;

c. Required prospective fraternity members or pledges including plaintiff's decedent to participate in an initiation ritual wherein, as a condition to membership in the fraternity, pledges were required to drink excessive and dangerous amounts of alcohol to a point of insensate intoxication in violation of 720 ILCS 120/5;

d. Required prospective fraternity members or pledges as a condition to membership in the fraternity, including plaintiff's decedent David R. Bogenberger, to drink excessive and dangerous amounts of alcohol to a point of insensate intoxication in violation of 720 ILCS 120/5;

e. Failed to seek medical attention for plaintiff's decent David R. Bogenberger after he became unconscious but instead placed him on a bed in a room previously designated for that purpose as a part of the plan for "Mom and Dad's Night" where he would not be seen or observed;

f. Required plaintiff s decedent David R. Bogenberger to consume excessive and dangerous amounts of alcohol;

g. Gave plaintiff's decedent excessive and dangerous amounts of alcohol;

h. Gave plaintiff's decedent David R. Bogenberger alcohol after he had become obviously and dangerously intoxicated;

i. Failed to call 911, an ambulance or seek medical attention for plaintiff's decedent after he became dangerously intoxicated and unconscious;

j. After plaintiff's decedent became dangerously intoxicated and unconscious carried him to a room previously designated for that purpose and placed him on a bed where he would not be seen or observed;

k. Were otherwise careless and negligent

6. As a direct and proximate result of one or more of the foregoing negligent acts or omissions, on November 1, 2012 plaintiff's decedent David R. Bogenberger was required to participate in an pledge event known as "Mom and Dad's Night" at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house during which plaintiff's decedent David R. Bogenberger was given and told to drink excessive and dangerous amounts of alcohol by fraternity officers, active members and others such that his blood alcohol level reached .43 mg/dl, whereupon he lost consciousness, was placed on a bed in a room in the fraternity house designated for that purpose, and on the evening of November 1-2, 2012, died; whereby his estate suffered presumed substantial pecuniary damages within the meaning of the Illinois Wrongful Death Act (740 ILCS 180/1 et seq.), including loss of his society and support, grief to his family, his lost wages and

UNIVERSITY fraternity house during which plaintiff's decedent David R. Bogenberger was given and told to drink excessive and dangerous amounts of alcohol by fraternity officers, members and others such that his blood alcohol level reached .43 mg/dl, whereupon he lost consciousness, was placed on a bed in a room in the fraternity house designated for that purpose, and on the evening of November 1-2, 2012, died; Further, during the "Mom's and Dad's Night" on November 1, 2012, plaintiff's decedent suffered damages within the meaning of the Illinois Survival Act (755 ILCS 5/27-6), including being made an object of ridicule, embarrassment and humiliation, pain and suffering.

7. Plaintiff Gary L. Bogenberger brings this action pursuant to the Illinois Survival Act as an Independent Administrator on behalf of beneficiaries of the Estate of David R. Bogenberger, deceased, namely: Gary L. Bogenberger (father), Ruth A. Bogenberger (mother), Matthew C. Bogenberger (brother), Megan A. Bogenberger (sister), Alex J. Bogenberger (brother) and Amy R. Bogenberger (sister).

8. Plaintiff adopts and incorporates herein by reference the "Statement of Facts" pp.3-9, supra.

WHEREFORE, plaintiff respectfully requests this Court enter a joint judgment in his favor and against the defendants ALEXANDER M. JANDICK, JAMES P. HARVEY, OMAR SALAMEH, PATRICK MERRILL, STEPHEN A. LIBERT, JOHN HUTCHINSON and DANIEL BIAGINI for an amount in excess of One Hundred Thousand Dollars ($100,000.00), plus costs.

COUNT VII

42

1. On November 1, 2012, and at all material times hereto, defendants MICHAEL J. PHILLIP, Jr., (a resident of Cook County), THOMAS F. COSTELLO (a resident of Indiana), DAVID R. SAILER (a resident of Bureau County), ALEXANDER D. RENN (a resident of DuPage County), MICHAEL A. MARROQUIN, ESTEFAN A. DIAZ (a resident of Winnebago County), HAZEL A. VERGARALOPE, MICHAEL D. PFEST (a resident of Cook County), ANDRES JIMENEZ, Jr. (a resident of DuPage County), ISAIAH LOTT (a resident of California), ANDREW W. BOULEANU (a resident of Cook County), NICHOLAS A. SUTOR, NELSON A. IRIZARRY, JOHNNY P. WALLACE, DANIEL S. POST, NSENZI K. SALASINI (a resident of Cook County), RUSSELL P. COYNER (a resident of Will County), GREGORY PETRYKA, KEVIN ROSETTI and THOMAS BRALIS were active members of Pi Kappa Alpha fraternity at Northern Illinois University, DeKalb, Illinois.

2. On November 1, 2012, plaintiff's decedent David R. Bogenberger was a prospective member or pledge of the Pi Kappa Alpha fraternity at Northern Illinois University in DeKalb, Illinois and was required by officers and active members of the fraternity to participate in a pledge event at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house known as "Mom and Dad's Night" as a condition to being accepted for membership in the Pi Kappa Alpha fraternity, a highly valued social status at Northern Illinois University.

3. On and at presently unknown times prior to November 1, 2012 defendants MICHAEL J. PHILLIP, THOMAS F. COSTELLO, DAVID R. SAILER, ALEXANDER D. RENN, MICHAEL A. MARROQUIN, ESTEFAN A. DIAZ, HAZEL A. VERGARALOPE, MICHAEL D. PFEST, ANDRES JIMENEZ, Jr., ISAIAH LOTT, ANDREW W. BOULEANU,

NICHOLAS A. SUTOR, NELSON A. IRIZARRY, JOHNNY P. WALLACE, DANIEL S. POST, NSENZI K. SALASINI, RUSSELL P. COYNER, GREGORY PETRYKA, KEVIN ROSETTI and THOMAS BRALIS, upon information and belief, knowingly and willing agreed to participate in planned event called "Mom and Dad's Night" during which fraternity pledges, including plaintiff's decedent David R. Bogenberger would be required to consume dangerous and potentially fatal amounts of alcohol to a point of insensate intoxication.

4. Defendants MICHAEL J.PHILLIP, THOMAS F. COSTELLO, DAVID R. SAILER, ALEXANDER D. RENN, MICHAEL A. MARROQUIN, ESTEFAN A. DIAZ, HAZEL A. VERGARALOPE, MICHAEL D. PFEST, ANDRES JIMENEZ, Jr., ISAIAH LOTT, ANDREW W. BOULEANU, NICHOLAS A. SUTOR, NELSON A. IRIZARRY, JOHNNY P. WALLACE, DANIEL S. POST, NSENZI K. SALASINI, RUSSELL P. COYNER, GREGORY PETRYKA, KEVIN ROSETTI and THOMAS BRALIS, owed plaintiff's decedent a duty of reasonable care not to subject him, during required initiation rituals, to the foreseeable consequences of required excessive consumption of alcohol to the point of insensate intoxication, including death.

5. On November 1, 2012, and at all material times hereto, there was in force and effect in the State of Illinois a certain statute which prohibits hazing, as when "a person commits hazing who knowingly requires the performance of any act by a student or other person in a school, college, university or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution if (a) the act is not sanctioned or authorized by the educational institution and (b) the act results in bodily harm to any person." 720 ILCS 120/5.

6. On November 1, 2012, and at all material times hereto, defendants MICHAEL J. PHILLIP, THOMAS F. COSTELLO, DAVID R. SAILER, ALEXANDER D. RENN, MICHAEL A. MARROQUIN, ESTEFAN A. DIAZ, HAZEL A. VERGARALOPE, MICHAEL D. PFEST, ANDRES JIMENEZ, Jr., ISAIAH LOTT, ANDREW W. BOULEANU, NICHOLAS A. SUTOR, NELSON A. IRIZARRY, JOHNNY P. WALLACE, DANIEL S. POST, NSENZI K. SALASINI, RUSSELL P. COYNER, GREGORY PETRYKA, KEVIN ROSETTI and THOMAS BRALIS, upon information and belief, acting in knowing and willing furtherance of and participation in a plan known as "Mom and Dad's Night", acting jointly and in concert, committed one or more of the following negligent acts or omissions:

a. Required plaintiff's decedent David R. Bogenberger to consume excessive and dangerous amounts of alcohol in violation of 720 ILCS 120/5;

b. Gave plaintiff's decedent excessive and dangerous amounts of alcohol in violation of 720 ILCS 120/5;

c. Gave plaintiff's decedent David R. Bogenberger alcohol after he had become obviously and dangerously intoxicated in violation of 720 ILCS 120/5;

d. Failed to call 911 or an ambulance or seek medical attention for plaintiff's decedent after he became dangerously intoxicated and unconscious;

e. After plaintiff's decedent became dangerously intoxicated and unconscious carried him to a room previously designated for that purpose and placed him on a bed where he would not be seen or observed;

f. Were otherwise careless and negligent.

Matthew C. Bogenberger (brother), Megan A. Bogenberger (sister), Alex J. Bogenberger (brother) and Amy R. Bogenberger (sister).

9. Plaintiff adopts and incorporates herein by reference the "Statement of Facts" pp.3-9, supra.

WHEREFORE, plaintiff respectfully requests this Court enter a joint judgment in his favor and against the defendants MICHAEL J. PHILLIP, Jr. THOMAS F.COSTELLO, DAVID R. SAILER, ALEXANDER D. RENN, MICHAEL A. MARROQUIN, ESTEFAN A. DIAZ, HAZEL A. VERGARALOPE, MICHAEL D. PFEST, ANDRES JIMENEZ, ISAIAH LOTT, ANDREW W. BOULEANU, NICHOLAS A. SUTOR, NELSON A. IRIZARRY, JOHNNY P. WALLACE, DANIEL S. POST, NSENZI SALASINI, RUSSELL P. COYNER, GREGORY PETRYKA, KEVIN ROSETTI and THOMAS BRALIS for an amount in excess of One Hundred Thousand Dollars ($100,000.00), plus costs.

COUNT IX

1. On November 1, 2012, and at all material times hereto, defendants ALYSSA ALLEGRETTI, JESSICA ANDERS, KELLY BURBACK, CHRISTINA CARRISA, RAQUEL CHAVEZ, LINDSEY FRANK, DANIELLE GLENNON, KRISTINNA KUNZ, JANET LUNA, NICHOLE MINNICK, COURTNEY ODENTHAL, LOGAN REDFIELD, KATIE REPORTO, TIFFANY SCHEINFURTH, ADRIANNA SOTELO, PRUDENCE WILLRET, KARISSA AZARELA, MEGAN LEDONE, NICHOLE MANFREDINI, JILLIAN MERRIL, and MONICA SKOWRON were students at Northern Illinois University and participated in a fraternity pledge event at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY

AT NORTHERN ILLINOIS UNIVERSITY fraternity house known as " Mom's and Dad's Night."

2. On and prior to November 1. 2012,. defendants ALYSSA ALLEGRETTI, JESSICA ANDERS, KELLY BURBACK, CHRISTINA CARRISA, RAQUEL CHAVEZ, LINDSEY FRANK, DANIELLE GLENNON, KRISTINNA KUNZ, JANET LUNA, NICHOLE MINNICK, COURTNEY ODENTHAL, LOGAN REDFIELD, KATIE REPORTO, TIFFANY SCHEINFURTH, ADRIANNA SOTELO, PRUDENCE WILLRET, KARISSA AZARELA, MEGAN LEDONE, NICHOLE MANFREDINI, JILLIAN MERRIL, and MONICA SKOWRON, upon information and belief, knowingly and willing agreed to participate in planned event called "Mom and Dad's Night" at the Pi Kappa Alpha Eta Nu fraternity house at Northern Illinois University in DeKalb, Illinois during which fraternity pledges, including plaintiff's decedent David R. Bogenberger, would be required to consume dangerous and potentially fatal amounts of alcohol to a point of insensate intoxication.

3. On November 1, 2012, plaintiff's decedent David R. Bogenberger was a prospective member or pledge of the Pi Kappa Alpha fraternity at Northern Illinois University in DeKalb, Illinois and was required to participate in a pledge event at the ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL FRATERNITY AT NORTHERN ILLINOIS UNIVERSITY fraternity house known as "Mom and Dad's Night" as a condition to being accepted as a member of Pi Kappa Alpha fraternity, a highly valued social status at Northern Illinois University.

4. On and prior to November 1, 2013, defendants ALYSSA ALLEGRETTI, JESSICA ANDERS, KELLY BURBACK, CHRISTINA CARRISA, RAQUEL CHAVEZ,

LINDSEY FRANK, DANIELLE GLENNON, KRISTINNA KUNZ, JANET LUNA, NICHOLE MINNICK, COURTNEY ODENTHAL, LOGAN REDFIELD, KATIE REPORTO, TIFFANY SCHEINFURTH, ADRIANNA SOTELO, PRUDENCE WILLRET, KARISSA AZARELA, MEGAN LEDONE, NICHOLE MANFREDINI, JILLIAN MERRIL, and MONICA SKOWRON, owed plaintiff's decedent a duty of reasonable care not to subject him, during pledge events in which they agreed to participate, , to the foreseeable consequences of required excessive consumption of alcohol to the point of insensate intoxication, including death.

5. On November 1, 2012, and at all material times hereto, there was in force and effect in the State of Illinois a certain statute which prohibits hazing, as when "a person commits hazing who knowingly requires the performance of any act by a student or other person in a school, college, university or other educational institution of this State, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution if (a) the act is not sanctioned or authorized by the educational institution and (b) the act results in bodily harm to any person." 720 ILCS 120/5.

6. On November 1, 2012, and at all material times hereto, defendants ALYSSA ALLEGRETTI, JESSICA ANDERS, KELLY BURBACK, CHRISTINA CARRISA, RAQUEL CHAVEZ, LINDSEY FRANK, DANIELLE GLENNON, KRISTINNA KUNZ, JANET LUNA, NICHOLE MINNICK, COURTNEY ODENTHAL, LOGAN REDFIELD, KATIE REPORTO, TIFFANY SCHEINFURTH, ADRIANNA SOTELO, PRUDENCE WILLRET, KARISSA AZARELA, MEGAN LEDONE, NICHOLE MANFREDINI, JILLIAN MERRIL, and MONICA SKOWRON, upon information and belief, knowingly and willingly, acting jointly and in

concert in furtherance of a planned pledge event at the Eta Nu Chapter of Pi Kappa Alpha fraternity known as "Mom and Dad's Night", committed one or more of the following negligent acts or omissions:

a. Encouraged and required plaintiff s decedent David R. Bogenberger to consume excessive and dangerous amounts of alcohol in violation of 720 ILCS 120/5.;

b. Gave plaintiff's decedent excessive and dangerous amounts of alcohol in violation of 720 ILCS 120/5;

c. Gave plaintiff s decedent David R. Bogenberger alcohol after he had become obviously and dangerously intoxicated in violation of 720 ILCS 120/5;

d. Failed to call 911 or an ambulance or seek medical attention for plaintiff's decedent after he became dangerously intoxicated and unconscious;

e. Were otherwise careless and negligent.

7. As a direct and proximate result of one or more of the foregoing negligent acts or omissions, on November 1, 2012, plaintiff's decedent David R. Bogenberger was required to drink excessive and dangerous amounts of alcohol by fraternity officers, active members and upon information and belief, defendants ALYSSA ALLEGRETTI, JESSICA ANDERS, KELLY BURBACK, CHRISTINA CARRISA, RAQUEL CHAVEZ, LINDSEY FRANK, DANIELLE GLENNON, KRISTINNA KUNZ, JANET LUNA, NICHOLE MINNICK, COURTNEY ODENTHAL, LOGAN REDFIELD, KATIE REPORTO, TIFFANY SCHEINFURTH, ADRIANNA SOTELO, PRUDENCE WILLRET, KARISSA AZARELA, MEGAN LEDONE, NICHOLE MANFREDINI, JILLIAN MERRIL, and MONICA SKOWRON so that his blood alcohol level reached .43 mg/dl, whereupon he lost consciousness, was placed on a bed in a

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

GARY L. BOGENBERGER, as Special Administrator of the Estate of DAVID R. BOGENBERGER,	)	
Plaintiff,	)	
v.	)	13 L 1616
PI KAPPA ALPHA CORPORATION, et. al.,	)	
Defendants.	)	

AMENDED [1]
MEMORANDUM OPINION AND ORDER ON DEFENDANTS' 2-615 MOTIONS TO DISMISS FIFTH AMENDED COMPLAINT [2]

I. FACTUAL BACKGROUND

The Plaintiff filed a twelve-count Fourth Amended Complaint against the Defendants arising out of the alcohol-related death of the Decedent at a college fraternity pledging activity known as "Mom and Dad's Night," on November 1, 2012. It is alleged that the Decedent, a pledge at the fraternity, was given excessive amounts of alcohol, became unconscious, was left on a bed, and then died. Counts I and II are directed at Defendants Pi

[1] The Amended Memorandum Opinion was issued to include the name of Patrick W. Merrill, as a individual defendant and officer of Eta Nu Chapter with regard to Counts III and IV, inadvertently omitted from the Original Memorandum Opinion, who had joined in the motions to dismiss of the other officers and pledge board members, and Russell Coyner, as an individual member of the fraternity, and who was included in the members' motion to dismiss.

[2] The Plaintiff filed a Fifth Complaint, on May 28, 2014, adding Defendants Karissa Azarela, Megan Ledone, Nichole Manfredini, Jillian Merrill and Monica Skowron, but the substantive allegations against all other defendants remained the same, and the motions to dismiss filed with regard to the Fourth Amended Complaint would stand as to the Fifth Amended Complaint.

Kappa Alpha Corporation (PKA) and Pi Kappa Alpha International Fraternity, counts III and IV are directed at Eta Nu Chapter of Pi Kappa Alpha International Fraternity at Northern Illinois University (EU), Pi Kappa Alpha Corporation (PKA), Pi Kappa Alpha International Fraternity, and seven officers or pledge board members, counts V and VI are directed at the seven officers and pledge board members individually, counts VII and VIII are directed at 21 named active members of fraternity, counts IX and X are directed at 16 non-member female students who participated in the fraternity event, and counts XI and XII are directed at Pike Alum, LLC, the owner of the premises where the fraternity was located. All of the claims sound in negligence and are brought pursuant to the Wrongful Death Act and the Survival Act.

2-615 Motions to Dismiss have been filed by Defendant PKA, Defendant EU, Defendants fraternity members Thomas Costello, Kevin Rossetti, Michael Pfest, Nelson Irizarry, Michael Phillip, Jr., David Sailer, Alexander Renn, Estefan A. Diaz, Hazel Vergaralope, Isaiah Lott, Andrew Bouleanu, Daniel Post, John Wallace, Thomas Bralis, Andres Jiminez, Nicholas Sutor, Nsenzi Salasini, Russell P. Coyne,[3] and Greg Petryka, (with Greg Petryka filing a separate motion), Defendants fraternity officers Alexander Jandick, James P. Harvey, Patrick W. Merrill, [4] Omar Salameh, Steven Libert, John Hutchinson, and Daniel Biagini, Defendants female fraternity guests/participants Kelly Burback, Lindsey Frank, Janet Luna, Jessica Anders, Tiffany Schweinfurth, Nicole Minik, Alyssia Allegretti,

---

[3] See Footnote 1, *supra.*

[4] See Footnote 1, *supra.*

Prudence Willrett, Logan Redfield, Kristianna Kinz, Raquel Chavez, Katherine Reporto, Courtney Odenthal, Nicole Manfredini, and Adriana Sotelo, and Defendant Pike Alum.

In all of the motions, the Defendants essentially argue that the Fourth Amended Complaint continues to fail to allege a duty in light of the case law which prohibits social host liability with regard to alcohol. They again point out that the Quinn and Haben cases have been rebuked and that even if their holdings survive, the allegations here do not fit into the narrow exception of liability carved out by those cases and do not fit within the Anti-Hazing statute. Further, the Defendants contend that the pleading again fails to allege facts to impose a duty with regard to a voluntary undertaking, concerted action, or joint liability.

In addition, the female students who participated in the subject event add that as they did not belong to the fraternity, even if the Quinn/Haben exception applied, it would not apply to them. They note that as it was only alleged that they were in the room, they owed no duty with respect to the provision of alcohol.

With regard specifically to Defendant Pike Alum, it adds that as it was only the landlord, it cannot be liable for the acts of the tenants which it did not know of, noting that there are no facts pled evincing any knowledge.

The Plaintiff has filed a combined response to the motions. The Plaintiff maintains that the pleading is sufficiently specific to state a cause of action against all of the Defendants. He continues to argue that Quinn and Haben are viable and remain the law, and that he has properly alleged claims in accordance with the dictates of those cases. He also maintains that he has properly alleged concerted action in a common scheme or plan, as well as a duty pursuant to a voluntary undertaking.

As to the female student participants, the Plaintiff contends that the anti-hazing statute applies to everyone, and thus, they owed a duty under the Quinn/Haben exception. With regard to Defendant Pike, the Plaintiff contends that as the tenants acts were foreseeable, the landlord is liable.

Most of the Defendants, either in the replies or in a separate motion, have moved to strike the Plaintiff's reference in the response to an unpublished Rule 23 appellate order as it is improper. They also move to strike the Plaintiff's reference to various articles and citations outside the four corners of the complaint.

The Court has read the motions, response, and replies.

II. COURT'S DISCUSSION AND RULING

While the Court has made the same points in all of the prior rulings on all of the previous incarnations of the Plaintiff's complaint, it will again review the applicable law. In Quinn v. Sigma Rho, 155 Ill. App.3d 231 (4th Dist., 1987), where a fraternity pledge suffered neurological damage as a result of the excessive consumption of alcohol during an initiation ceremony, the court held that a complaint stated a cause of action based on the fact that the plaintiff was *required* to drink to intoxication in order to become a member of the fraternity and the fact that the fraternity's conduct violated the hazing statute. Quinn., at 238. In a similar situation with regard to a university Lacrosse Club, the court in Haben v. Anderson, 232 Ill. App.3d 260 (3rd Dist., 1992), followed the rationale in Quinn and found that a complaint was sufficient where the drinking was a requirement of membership to the club. Haben, at 263.

However, after Quinn and Haben, the Illinois Supreme Court, in the case of Charles

v. Seigfried, 165 Ill.2d 482, 504 (1995), declined to create *any* form of social host liability. Charles, at 504. While the court in Charles did not specifically overrule these cases, the breadth and scope of the Charles ruling appears to have abrogated their holdings. Further, in the Wakulich case, the Illinois Supreme Court specifically questioned the continued validity of Quinn and recognized that the ruling and rationale in both Quinn and Haben would apply only in *exceptionally* narrow circumstances, where a college fraternity or organization requires those seeking membership to engage in illegal and dangerous activities in violation of the anti-hazing statute. Wakulich v. Mraz, 203 Ill.2d 223, 239-240 (2003). And, prior to the case being affirmed by the Illinois Supreme Court, the First District Appellate court in Wakulich, stated that the Quinn exception did not survive Charles. Wakulich v. Mraz, 332 Ill. App.3d 768, 773 (1st Dist., 2001). Thus, despite the Plaintiff's protestations to the contrary and his attempts ascribe a broader applicability to Quinn, a claim under the Quinn exception is questionable, at best.

Moreover, to the extent that it remains possible to state a cause of action where a student was required to consume alcohol to intoxication as a prerequisite for membership in a fraternity or university organization, the pleading must contain specific, relevant factual allegations which are capable of setting forth that narrow exception.

In the Fourth Amended Complaint, despite a few additional allegations, the Plaintiff has again failed to set forth sufficient facts to allege a duty under the Quinn exception to social host liability. The Plaintiff's allegations continue to be conclusory and do not plead facts which show that the fraternity *required* intoxication as a prerequisite for membership in violation of the anti-hazing statute. In the instant pleading, it is merely alleged that "on

information and belief" the Decedent "believed" that participation in the activity and excessive drinking were required for membership.

Also, it is merely alleged that the plan to have pledges drink excessively was made by "unknown" fraternity members. These are not the specific, factual allegations necessary to show that the fraternity required those seeking membership to engage in illegal and dangerous activities in accordance with the Quinn decision. Furthermore, the allegations with respect to any voluntary undertaking *vis-a-vis* caring for the Decedent when he became unconscious, continue to be deficient.

Similarly, the allegations of concerted action or joint liability also continue to be lacking in factual specificity, as are the allegations which attempt to plead the existence of a conspiracy.

With regard to all of the individual Defendants, fraternity officers, members, and student participants, the Plaintiff still does not allege with particularity the facts showing which individual or individuals committed any acts, either indicative of taking control over the Decedent, or showing the concoction of a scheme or plan, or illustrating how they acted in concert pursuant to such a scheme or plan.

While the Plaintiff now alleges that fraternity member Gregory Petryka put the Decedent in the bedroom and tried to orient his head to prevent him from choking on vomit if he vomited, there are no facts pled which show that Petryka took affirmative action and assumed exclusive control of the Decedent which put him in a worse position. Thus,

there is no duty based on a voluntary undertaking against Gregory Petryka. [5]

In addition, with regard to the non-member female participants in the incident in counts IX and X, as the Court previously noted, even assuming that the Quinn exception was viable and applicable to this case, it would not apply to those Defendants as they were not members of the fraternity. There is also nothing in the anti-hazing statute when read as a whole which would support its extension to non-members of an organization. In any event, even if it did, the Fourth Amended Complaint again lacks the facts necessary to support an exception to social host liability, voluntary undertaking, or concerted action/joint liability, with regard to these Defendants.

Finally, with regard to Defendant Pike Alum, there are no factual allegations which would impose a duty on it as a landlord with regard to the actions of its tenant, the fraternity. There are no specific facts pled which support the bare conclusory allegation that it had knowledge of the fraternity's dangerous and illegal activities at "Mom and Dad's Night," nor are there any other factual allegations which provide support for the bare allegation of duty on the part of Pike Alum. Additionally, in light of the deficiencies with respect to social host liability, voluntary undertaking, and joint liability, no such claim has been stated against Pike Alum.

The Plaintiff has had five opportunities to state a claim here and in light of the applicable law, it does not appear likely that the Plaintiff will be able to properly state a cause of action against these Defendants. Therefore, based on the foregoing, the Defendants' 2-

---

[5] The Court also amended this page of the Memorandum Opinion to separate the ruling *vis-a-vis* Gregory Petryka, as he had filed a separate motion to dismiss.

615 Motions to Dismiss are granted with prejudice against all Defendants [6] and with no further leave to replead.

This Amended Memorandum Opinion and Order is entered *nunc pro tunc* to December 11, 2014.

ENTER:

ENTER

DEC 1 2 2014

KATHY M. FLANAGAN #267

Judge Kathy M. Flanagan

[6] This phrase was added to include all Defendants in this Court's ruling, regardless if they filed a motion or merely joined in another defendant's motion.

KeyCite Yellow Flag - Negative Treatment
Appeal Allowed by Bogenberger v. Pi Kappa Alpha Corp., Inc.., Ill., September 28, 2016

2016 IL App (1st) 150128
Appellate Court of Illinois,
First District, First Division.

GARY L. BOGENBERGER, as special Administrator of the Estate of David Bogenberger, deceased, Plaintiff–Appellant,

v.

PI KAPPA ALPHA CORPORATION, INC., a Corporation; Pi Kappa Alpha International Fraternity, an Unincorporated Association; Eta Nu Chapter of Pi Kappa Alpha International Fraternity at Northern Illinois, an Unincorporated Association; Alexander M. Jandick, individually and as an officer of Eta Nu Chapter of Pi Kappa Alpha International Fraternity at Northern Illinois University; James P. Harvey, Individually and as an Officer of Pi Kappa Alpha Eta Nu Chapter; Omar Salameh, Individually and as an Officer of Pi Kappa Alpha Eta Nu Chapter; Patrick W. Merrill, Individually and as an Officer of Eta Nu Chapter of Pi Kappa Alpha Fraternity at Northern Illinois University; Steven A. Libert, Individually and as an Officer of Pi Kappa Alpha Eta Nu Chapter; John Hutchinson, Individually and as an Officer of Pi Kappa Alpha Eta Nu Chapter; Daniel Biagini, Individually and as an Officer of Pi Kappa Alpha Eta Nu Chapter; Michael J. Phillip, Jr.; Thomas F. Costello; David R. Sailer; Alexander D. Renn; Michael A. Marroquin; Estefan A. Diaz; Hazel A. Vergaralope; Michael D. Pfest; Andres J. Jimenez, Jr.; Isaiah Lott; Andrew W. Bouleanu; Nicholas A. Sutor; Nelson A. Irizarry; Johnny P. Wallace; Daniel S. Post; Nsenzi K. Salasini; Russell P. Coyner; Gregory Petryka; Kevin Rossetti; Thomas Bralis; Alyssa Allegretti; Jessica Anders; Kelly Burback; Christina Carrisa; Raquel Chavez; Lindsey Frank; Danielle Glennon; Kristina Kunz; Janet Luna; Nichole Minnick; Courtney Odenthal; Logan Redfield; Katie Reporto; Tiffany Scheinfurth; Adrianna Sotelo; Prudence Willret; Karissa Azarela; Megan Ledone; Nichole Manfredini; Jillian Merril; Monica Skowron; and Pike Alum, L.L.C., Defendants–Appellees.

No. 1–15–0128.
|
June 13, 2016.

Synopsis
Background: Father, as special administrator of child's estate, filed a negligence complaint under the Wrongful Death Act and the Survival Act against national fraternity organization, local chapter of fraternity, local chapter members, and others after child, who was a pledge of fraternity, died following participation in a mandatory fraternity event. The Circuit Court, Cook County, Kathy M. Flanagan, J., granted defendants' motion to dismiss. Father appealed.

Holdings: The Appellate Court, Harris, J., held that:

[1] father alleged a duty on which a cause of action for common law negligence could be based, not a social host situation;

[2] allegations adequately stated a negligence claim against fraternity members based on a voluntary undertaking theory;

[3] allegations were sufficient to state a negligence cause of action against local chapter of fraternity;

[4] allegations were insufficient to state a negligence claim based on vicarious liability against national fraternity organization and international fraternity organization;

[5] sorority women who participated in "Mom and Dad's Night," a mandatory fraternity pledge activity, did not owe pledge a duty of reasonable care; and

[6] landlord of local chapter of fraternity did not have a duty to protect pledge from the actions of members of local fraternity chapter.

Affirmed in part, reversed in part, and remanded.

Connors, J., filed a specially concurring opinion.

Attorneys and Law Firms

*5 Law Office of Michael W. Rathsack, of Chicago (Peter R. Coladarci and Michael W. Rathsack, of counsel), for appellant.

Johnson & Bell, Ltd., of Chicago (Eric W. Moch, of counsel), for appellees Pi Kappa Alpha Corporation, Inc., Pi Kappa Alpha International Fraternity, and Eta Nu Chapter of Pi Kappa Alpha International Fraternity.

Dykema Gossett PLLC, of Chicago (Michael C. Borders, of counsel), for appellee Alexander Jandick.

O'Hagan LLC, of Chicago (Daniel J. Nolan, of counsel), for appellees Kelly Burback, Lindsey Frank, Janet Luna, Jessica Anders, Tiffany Schweinfurth, Nichole Minnick, and Adrianna Sotelo.

Scott Halsted & Babetch, P.C., of Chicago (Robert K. Scott, of counsel), for appellee Steven A. Libert.

Law Offices of Meachum, Starck & Boyle, of Chicago (Thomas W. Starck and Cathleen Hobson, of counsel), for appellee Andrew W. Bouleanu.

Smith Amundsen LLC, of Chicago (Michael Resis, of counsel), for appellees Thomas F. Costello, Hazel A. Vergaralope, Nelson A. Irizarry, Kevin Rossetti, and Michael Pfest.

Mulherin, Rehfeldt & Varchetto, P.C., of Wheaton (Ray H. Rittenhouse, of counsel), for appellee David R. Sailer.

Mulherin, Rehfeldt & Varchetto, P.C., of Wheaton (Ray H. Rittenhouse, of counsel), for appellee David R. Sailer.

Higgins & Burke P.C., of St. Charles (John Higgins and Brittany A. Higgins, of counsel), for appellee Andres Jimenez.

Clausen Miller P.C., of Chicago (George K. Flynn and Kim Hartman, of counsel), for appellee Isaiah Lott.

Querrey & Harrow, Ltd., of Chicago (Kevin J. Caplis and David M. Lewin, of counsel), for appellees John Wallace and Thomas Bralis.

ML Le Fevour and Associates, Ltd., of Burr Ridge (Mark Le Fevour, of counsel), for appellee Daniel Post.

Greene & Letts, of Chicago (Eileen Letts, of counsel), for appellee Michael J. Phillip, Jr.

Kopka, Pinkus & Dolin P.C., of Chicago (Timothy Palumbo, of counsel), for appellee Patrick W. Merrill.

Cameli & Hoag, P.C., of Chicago (Tom Cameli and Stephen M. Brandenberg, of counsel), for appellee Daniel Biagini.

Esp Kreuzer Cores LLP, of Wheaton (Douglas J. Esp, of counsel), for appellee Estefan A. Diaz.

*6 James P. Pelafas & Associates, of Elmhurst (James P. Pelafas and David Goldberg, of counsel), for appellee Prudence Willret.

Chilton Yambert Porter LLP, of Chicago (Jon Yambert and Joseph Vallort, of counsel), for appellee Alyssa Allegretti.

Law Offices of Capuani & Schneider, of Chicago (Todd Schneider, of counsel), for appellee Nicholas Sutor.

Sanchez Daniels & Hoffman LLP, of Chicago (John S. Huntley and Renee Ziolkowski, of counsel), for appellee Jonathan Hutchinson.

Wolfe & Jacobson, Ltd., of Chicago (David Wolfe, of counsel), for appellees Raquel Chavez and Russell P. Coyner.

Molzahn, Rocco, Reed & Rouse, LLC, of Chicago (Tim Reed and Pete Maisel, of counsel), for appellee Kristina Kunz.

Malcom P. Chester, of Des Plaines, for appellee Katie Reporto.

Condon & Cook, LLC, of Chicago (Mark B. Ruda and Guy M. Conti, of counsel), for appellee Omar Salameh.

Larose & Bosco, Ltd., of Chicago (David Koppelman and Joseph A. Bosco, of counsel), for appellee Alexander Renn.

Paul E. Kralovec, of Chicago, for appellee James P. Harvey.

Michael Malatesta, of Chicago, for appellee Nsenzi K. Salasini.

Daniel P. Costello & Associates, of Chicago (Daniel P. Costello, of counsel), for appellee Courtney Odenthal.

Ripes, Nelson, Baggot & Kalabratsos, PC, of Chicago (Brian White and Michael J. Ripes, of counsel), for appellee Gregory Petryka.

Alan H. Shifrin & Associates, LLC, of Rolling Meadows (Terry D. Slaw, of counsel), for appellee Michael A. Marroquin.

Brenner, Monroe, Scott & Anderson, Ltd., of Chicago (Amy L. Anderson and Joshua Bell, of counsel), for appellee Pike Alum, L.L.C.

Stellato & Schwartz, Ltd., of Chicago (Esther Joy Schwartz, Donald E. Stellato, and Howard J. Fishman, of counsel), for appellee Nichole Manfredini.

OPINION

Justice HARRIS delivered the judgment of the court, with opinion.

**443 ¶ 1 Plaintiff, Gary L. Bogenberger as special administrator of the estate of David Bogenberger, appeals the order of the circuit court granting a motion to dismiss pursuant to section 2–615 of the Code of Civil Procedure (735 ILCS 5/2–615 (West 2012)) in favor of defendants Pi Kappa Alpha Corporation, Inc., *et al.*, on plaintiff's negligence complaint. On appeal, plaintiff contends the court erred in dismissing his complaint because (1) it stated a cause of action where the facts alleged that David's death resulted from his required participation in a fraternity event and actions that violated the Criminal Code of 2012 (Hazing Act) (720 ILCS 5/ 12C–50 (West 2012)); (2) it stated a cause of action showing that defendants voluntarily undertook the duty to care for intoxicated pledges; (3) it stated a cause of action as to the nonmember participants because they were recruited by the fraternity to participate in the hazing; and (4) it stated a cause of action as to the landlord of the premises because the landlord was aware of the hazing activity. For the

following reasons, we reverse the dismissal as to defendants Eta Nu Chapter of Pi Kappa Alpha International Fraternity at Northern Illinois, the named executive officers and pledge board members of the Eta Nu Chapter of Pi Kappa Alpha, and named active fraternity members. However, we affirm the dismissal as to Pi **444 *7 Kappa Alpha Corporation, Inc. (PKA Corp.), Pi Kappa Alpha International Fraternity (PKA International), the nonmember defendants, and Pike Alum, L.L.C. (Pike Alum).

¶ 2 JURISDICTION

¶ 3 The trial court entered its order dismissing plaintiff's complaint on December 12, 2014, *nunc pro tunc* to December 11, 2014. Plaintiff filed his notice of appeal on January 9, 2015. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. May 30, 2008) governing appeals from final judgments entered below.

¶ 4 BACKGROUND

¶ 5 Plaintiff's son, David Bogenberger, was a prospective pledge of Pi Kappa Alpha fraternity at Northern Illinois University (NIU). While participating in a fraternity event David became intoxicated, lost consciousness, and subsequently died. Plaintiff, as special administrator of David's estate, filed a four-count negligence complaint seeking recovery under the Wrongful Death Act (740 ILCS 180/1 *et seq.* (West 2012)) and the Survival Act (755 ILCS 5/27–6 (West 2012)). Pursuant to subpoenas issued to the De Kalb police department, De Kalb county State's attorney's office, and the NIU police department, plaintiff filed a 10–count amended complaint. Defendants filed a section 2–615 motion to dismiss, which the trial court granted because although plaintiff alleged that pledges were required to consume an excessive amount of alcohol to obtain membership in the fraternity, plaintiff did not plead specific facts to trigger social host liability under Illinois law. The trial court gave plaintiff leave to file a second amended complaint.

¶ 6 Plaintiff filed a second and third-amended complaint, which the trial court again dismissed pursuant to section 2–615. The trial court, however, gave plaintiff leave to file a fourth-amended complaint. Before filing the complaint, plaintiff filed motions to clarify the trial court's ruling and to conduct discovery. The trial court denied plaintiff's motion to clarify and plaintiff, in response to the trial court's grant of defendants' motions for a protective order and to quash deposition notices, withdrew his motion to conduct discovery. Plaintiff then filed a fourth-amended complaint, and defendants filed a motion to dismiss. While defendants' motion was pending, plaintiff requested leave to file a fifth-amended complaint which the trial court granted.

¶ 7 Plaintiff's twelve-count, fifth-amended complaint alleged that upon information and belief, employees or agents of PKA Corp. and/or PKA International encouraged officers and/or active members of the Eta Nu chapter at NIU to hold "Greek Family Night" events as part of the pledging process. The complaint alleged that the pledging process consisted of fraternity events designed to familiarize fraternity members with potential new members (pledges) before they vote on whether to initiate a pledge into the fraternity. It alleged that the executive officers of the Eta Nu chapter, as well as members of the pledge board and other active members, planned a "Mom and Dad's Night" pledge event to be held at their fraternity house on November 1, 2012.

¶ 8 The complaint alleged that the event called for two or three "Greek couples" assigned to each of the designated seven rooms in the fraternity to ask pledges various questions and give each pledge a required amount of alcohol. Women in sororities were contacted to be the "Greek Mothers" at the event. Active members of **445 *8 the fraternity participating in the event selected a pledge for whom he and a designated woman would be the pledge's "Greek Mother and Father." The executive officers had breathalyzers to monitor the blood alcohol content of the pledges. The pledges were informed that attendance and participation in "Mom and Dad's Night" was mandatory. The complaint alleged

that upon information and belief, David and the other pledges believed that attendance and participation in "Mom and Dad's Night" was a required condition for being initiated into the fraternity. The event was not registered with, or otherwise sanctioned by, NIU.

¶ 9 On November 1, 2012, David and other pledges arrived at the fraternity house, were divided into groups of two or three, and given a list of rooms in the house to enter following a designated order. Each pledge was given a four-ounce plastic cup which he brought with him to each room he visited. At each room, the pledges were asked questions and no matter their responses were required to consume vodka given by the active members and women in the room. If pledges showed reluctance to drink, the active members and women would call them "pussies" and "bitches" until they drank. After progressing through the seven rooms, each pledge had consumed three to five glasses of vodka in each room within one and a half hours. With assistance from the active members and sorority women participating, because they could no longer walk on their own, the pledges were then taken to the basement of the fraternity house where they were told the identity of their Greek parents, and given t-shirts, paddles, and buckets in which to vomit.

¶ 10 The complaint alleged that the pledges "vomited on themselves, each other, in rooms and on hallway floors." They also began to lose consciousness. Members of the fraternity placed the pledges in designated places throughout the fraternity house, and member Gregory Petryka put David into his Greek father's room. The complaint alleged that Petryka tried to orient David's "head and body so that if he vomited, he would not choke on it." Executive officers Alexander M. Jandick and Patrick W. Merrill sent a mass text to other officers and active members stating, "if you or any girl you know has a pic or vid of a passed out pledge delete it immediately. Just do it." Upon information and belief, officers and active members checked on the pledges occasionally and adjusted their positions so they would not choke. After the pledges lost consciousness, the active members and officers decided to instruct members not to call 911 or seek medical care for them. David subsequently died with a blood alcohol level of .43 mg./dl.

¶ 11 Counts I and II of the complaint are directed at PKA Corp. and PKA International; counts III and IV are directed at Eta Nu chapter at NIU and the named seven officers; counts V and VI are directed at named pledge board members; counts VII and VIII are directed at named active members of the fraternity who participated in the event; counts IX and X are directed at named, nonmember women who participated in the event; and counts XI and XII are directed at the owner of the premises where the event occurred, Pike Alum. For brevity and clarity purposes, we will discuss the specific allegations of each count as it becomes relevant to our disposition of the case.

¶ 12 Defendants filed a section 2–615 motion to dismiss. On December 11, 2014, the trial court issued its order dismissing plaintiff's complaint. The trial court acknowledged that **446 *9 *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity,* 155 Ill.App.3d 231, 107 Ill.Dec. 824, 507 N.E.2d 1193 (1987), and *Haben v. Anderson,* 232 Ill.App.3d 260, 173 Ill.Dec. 681, 597 N.E.2d 655 (1992), held that a complaint states a cause of action if it alleges that the plaintiff was required to drink to intoxication to become a member, and the conduct violated the Hazing Act. However, it questioned the viability of those cases after the supreme court's decision in *Charles v. Seigfried,* 165 Ill.2d 482, 209 Ill.Dec. 226, 651 N.E.2d 154 (1995), given the breadth and scope of the holding in *Charles.* The trial court also found that plaintiff's allegations were conclusory and lacked factual specificity as to all defendants. Further, as to the nonmember women defendants, the trial court found that the Hazing Act did not apply to nonmembers of an organization. Since plaintiff had five opportunities to state a claim, the trial court determined that "it does not appear likely that [he] will be able to properly state a cause of action against these Defendants." The trial court therefore dismissed the complaint with prejudice. On December 12, 2014, the trial court issued an amended order, *nunc pro tunc* to December 11, 2014, to include other defendants. Plaintiff filed this timely appeal.

¶ 13 ANALYSIS

¶ 14 On appeal, plaintiff first contends that the trial court erred in dismissing his negligence complaint where the facts alleged that David's death resulted from his required participation in a fraternity event and the actions violated the Hazing Act. Defendants argue that dismissal was proper because plaintiff's claim is based on social host liability and Illinois common law does not recognize a duty owed by social hosts in serving alcohol to their guests.

[1] [2] [3] ¶ 15 To prevail on a negligence claim, plaintiff must show that defendants owed a duty, they breached their duty, and the defendants' breach was the proximate cause of injury. *Krywin v. Chicago Transit Authority,* 238 Ill.2d 215, 225, 345 Ill.Dec. 1, 938 N.E.2d 440 (2010). If no duty is owed to plaintiff, plaintiff cannot recover in tort for negligence. *American National Bank & Trust Co. of Chicago v. National Advertising Co.,* 149 Ill.2d 14, 26, 171 Ill.Dec. 461, 594 N.E.2d 313 (1992). Whether a duty exists is a question of law for courts to decide. *Krywin,* 238 Ill.2d at 226, 345 Ill.Dec. 1, 938 N.E.2d 440. The question before us is whether defendants owed a duty to David where David was required to consume excessive amounts of alcohol as part of a fraternity pledging activity, and he subsequently died as a result of his excessive alcohol consumption. To make this determination, we examine Illinois common law and legislation regarding alcohol-related liability.

¶ 16 Our supreme court has repeatedly recognized the common law rule in Illinois that no cause of action exists for injuries arising out of the sale or gift of alcoholic beverages. *Charles v. Seigfried,* 165 Ill.2d 482, 486, 209 Ill.Dec. 226, 651 N.E.2d 154 (1995). The reasoning behind the rule is that the drinking of the alcohol, not the selling or serving of it, is the proximate cause of intoxication and resulting injury. *Id.* However, the Illinois legislature "created a limited statutory cause of action when it enacted the original Dramshop Act of 1872" (Dramshop Act). *Id.* The act imposed a form of no-fault liability on dramshops for selling or serving intoxicating beverages to individuals who subsequently injure third parties.[1] *Id.* at 487, 209 Ill.Dec. 226, 651 N.E.2d 154. In *Cruse v.* **447 *10 *Aden,* 127 Ill. 231, 20 N.E. 73 (1889), the supreme court refused to extend liability under the Dramshop Act to social hosts who give "a glass of intoxicating liquor to a friend as a mere act of courtesy and politeness." Relying on principles underlying the common law rule, the court reasoned that it was not a tort at common law to give alcoholic beverages to " 'a strong and able-bodied man' " and therefore a claim based on social host liability "can in no sense be regarded as an action of tort at common law." *Id.* at 234, 20 N.E. 73.

1 The act in its present incarnation, the Liquor Control Act of 1934 (Liquor Control Act) (235 ILCS 5/6–21 (West 2010)), grants to third parties a similar cause of action.

¶ 17 Other cases since *Cruse* tested its broad holding that no social host liability exists for alcohol-related injuries. In *Cunningham v. Brown,* 22 Ill.2d 23, 24, 174 N.E.2d 153 (1961), the supreme court considered whether to recognize a common law remedy allowing recovery against a tavern where plaintiff's decedent, who became despondent after being served alcohol, subsequently took his own life. Since legislation provided remedies against tavern owners only for third party injuries caused by an intoxicated person, the plaintiff could not recover under the Liquor Control Act. The plaintiff also acknowledged that the common law provided no remedy for the mere sale of alcohol to a person because it is the drinking, not the selling, of alcohol that is the proximate cause of intoxication. *Id.* at 30, 174 N.E.2d 153. However, the plaintiff argued for an exception to the common law rule, reasoning that "where a sale is made to one who is intoxicated or insane and the incapacity of the consumer to choose [to drink] is known to the vendor * * * then the sale and consumption are merged and in reality become the act of the seller and the proximate cause of the intoxication." *Id.*

¶ 18 The supreme court in *Cunningham* acknowledged that "plaintiff's argument has some merit, and if no more were involved than laying down a new rule of liability it would warrant more serious consideration." *Id.* Instead, the legislature through the Liquor Control Act had provided a remedy against tavern owners for alcohol-related injuries and the supreme court was unwilling to create a common law remedy that would be "almost coincidental with the remedy provided" by the Liquor Control Act. *Id.* Therefore, it held that "the Liquor Control Act provides the only remedy against tavern operators and owners of tavern premises for injuries to person, property or means of support by an intoxicated person or in consequence of intoxication." *Id.* at 30–31, 174 N.E.2d 153.

¶ 19 In *Charles*, the supreme court considered whether an exception to the common law rule exists where social hosts knowingly serve alcohol to minors who become intoxicated and suffer serious injury or death as a result. *Charles*, 165 Ill.2d at 484, 209 Ill.Dec. 226, 651 N.E.2d 154. Prior to its analysis, the supreme court strongly emphasized the continued validity of the common law rule and its intent to adhere to "well-established law." *Id.* at 486, 209 Ill.Dec. 226, 651 N.E.2d 154. It stated that "[f]or over one century, this court has spoken with a single voice to the effect that no social host liability exists in Illinois" and that "no common law cause of action for injuries arising out of the sale or gift of alcoholic beverages" exists. *Id.* The supreme court proceeded to outline the history of the common law rule regarding social host liability, including discussions of *Cruse* and *Cunningham*. It noted its holding in *Cunningham* that the Dramshop Act provides the exclusive remedy against tavern owners and operators for alcohol-induced injuries, and determined that *Cunningham* "firmly established the rule of law that, in Illinois, the General Assembly has preempted the entire field of alcohol-related liability through its passage **448 *11 and continual amendment of tHe dramshOp act." *id.* at 488–89, 209 iLl.dec. 226, 651 N.E.2d 154. In *Charles*, the supreme court determined that this "[l]egislative preemption in the field of alcohol-related liability extends to social hosts who provide alcoholic beverages to another person, whether that person be an adult, an underage person, or a minor." *Id.* at 491, 209 Ill.Dec. 226, 651 N.E.2d 154. Therefore, it held that no common law cause of action exists where a social host serves alcohol to minors; in other words, social hosts owe no duty to minors under the common law when serving them alcohol. *Id.*

¶ 20 *Charles* also discussed public policy reasons for leaving this issue in the hands of the legislature rather than with the courts, finding that the legislature, "by its very nature, has a superior ability to gather and synthesize data pertinent to the issue." *Id.* at 493, 209 Ill.Dec. 226, 651 N.E.2d 154. It noted the difficulty courts would face in determining social host liability amid the multiple parties who could be held liable, and in defining liability so as to avoid a "flood of injured litigants" from crowding the courts. *Id.* at 494, 209 Ill.Dec. 226, 651 N.E.2d 154. The court expressed concern that by creating this exception to the common law rule, liability for social hosts who merely serve alcoholic beverages to guests in their home "would be unlimited" whereas the Dramshop Act limits liability for liquor vendors for each compensable injury. *Id.* The supreme court further noted that review of the Liquor Control Act's legislative history showed that "the General Assembly has deliberately chosen *not* to impose social host liability upon adults who provide alcoholic beverages to persons under the legal drinking age." (Emphasis in original.) *Id.* at 501, 209 Ill.Dec. 226, 651 N.E.2d 154. It concluded that "[j]udicial action in the face of these legislative decisions would be ill-advised." *Id.*

¶ 21 Plaintiff here challenges the applicability of *Charles*, arguing that this is not a social host case and that his cause of action is more in line with the claims in *Quinn* and *Haben*. In *Quinn*, the complaint alleged that the plaintiff, an 18–year–old pledge of the defendant fraternity, was required to participate in an initiation ceremony. *Quinn*, 155 Ill.App.3d at 233, 107 Ill.Dec. 824, 507 N.E.2d 1193. The ceremony involved members directing each pledge to drink a 40–ounce pitcher of beer without letting the pitcher leave the pledge's lips or until the pledge vomited. The plaintiff complied, became intoxicated and could not properly care for himself. After drinking the pitchers, the pledges went to a tavern where an active member directed the plaintiff to drink from an 8–ounce bottle of whiskey. The plaintiff complied although the complaint did not specify the amount he drank from the bottle. At the tavern, the active members purchased more alcohol for the pledges. *Id.* at 233–34, 107 Ill.Dec. 824, 507 N.E.2d 1193.

¶ 22 The complaint alleged that as a result of this excessive drinking, the plaintiff "became extremely intoxicated" and after being brought back to the fraternity, he was left on the hardwood floor to sleep off his intoxication. When he awoke, the plaintiff found he could not use his hands or arms properly and was taken to the hospital. His blood alcohol level, measured almost 15 hours after he had fallen asleep at the fraternity, registered at .25. The plaintiff alleged that as a result of his extreme intoxication, he suffered neurological damage to his arms and hands. *Id.* at 234, 107 Ill.Dec. 824, 507 N.E.2d 1193.

¶ 23 The question before the appellate court was whether a fraternity owed a common law duty to its pledge where the pledge was required to consume an excessive **449 *12 amount of alcohol, and he then became intoxicated and

suffered neurological damage as a result. *Id.* at 233–34, 107 Ill.Dec. 824, 507 N.E.2d 1193. The court acknowledged that to recognize a cause of action in negligence in this case would put the decision "perilously close to the extensive case law prohibiting common law causes of action for negligently selling alcohol." *Id.* at 235, 107 Ill.Dec. 824, 507 N.E.2d 1193. However, the *Quinn* court was careful to point out that the facts in the complaint alleged something more than the mere furnishing of alcohol. *Id.* at 237, 107 Ill.Dec. 824, 507 N.E.2d 1193. Instead, the situation consisted of a "fraternity function where [the] plaintiff was required to drink to intoxication in order to become a member of the fraternity" and as a result the plaintiff's blood alcohol level was " 'at or near fatal levels.' " *Id.* Although the plaintiff could have voluntarily walked away from the fraternity, the complaint alleged that fraternity membership was a " 'much valued status' " that perhaps blinded him "to any dangers he might face." *Id.* The court also considered the nature of the duty and found that the alleged injury was foreseeable, the burden on defendant to guard against the injury was small, and that the burden is properly on the fraternity since it was in control of the activities requiring pledge participation. *Id.* at 237, 107 Ill.Dec. 824, 507 N.E.2d 1193. Therefore, the court recognized a cause of action in negligence for injuries sustained by pledges who were required to participate in "illegal and very dangerous activities" to obtain fraternity membership. *Id.*

¶ 24 The *Quinn* court cautioned, however, that this duty should be construed narrowly and that it was basing its decision on two factors. *Id.* First, the fact that the plaintiff was required to drink to intoxication, via social pressure to comply with initiation requirements, placed him in a position of being coerced that is distinguishable from the social host-guest context. *Id.* at 237–38, 107 Ill.Dec. 824, 507 N.E.2d 1193. Second, the legislature enacted the Hazing Act to protect persons like the plaintiff from embarrassing or endangering themselves through thoughtless and meaningless activity. A violation of the Hazing Act, or any statute "designed for the protection of human life or property is *prima facie* evidence of negligence." (Internal quotation marks omitted.) *Id.*

¶ 25 In *Haben,* the third district extended *Quinn* to recognize a cause of action in negligence against members of the Western Illinois University Lacrosse Club where the plaintiff's 18–year–old decedent sought membership in the high-status club, and the initiation ceremony traditionally included hazing activities and excessive drinking. *Haben,* 232 Ill.App.3d at 262–63, 173 Ill.Dec. 681, 597 N.E.2d 655. The court saw no reason to limit *Quinn* to organizations, and although the plaintiff did not allege that the decedent was required to drink alcohol, he did allege that excessive drinking was a *de facto* requirement that came into existence through years of tradition. *Id.* at 266–67, 173 Ill.Dec. 681, 597 N.E.2d 655.

[4] [5] ¶ 26 *Quinn* and *Haben* determined that a situation where a person is required by those "serving" alcohol to consume excessive amounts in order to become members of an exclusive, highly valued organization is not a social host situation, and therefore the organization owes that person a duty to protect him from engaging in harmful and illegal activities. These cases are factually on point with the case before us. Like *Quinn* and *Haben,* plaintiff here alleged that David was required to drink excessive amounts of alcohol in order to obtain membership in a highly valued organization **450 *13 the Eta Nu chapter of the Pi Kappa Alpha fraternity. He also alleged that pledges faced social pressure to comply with the fraternity's requests and that participation in such activity violated the Hazing Act. See *Quinn,* 155 Ill.App.3d at 237–38, 107 Ill.Dec. 824, 507 N.E.2d 1193. Following *Quinn* and *Haben,* we find that we are not presented with a social host situation here and plaintiff has alleged a duty on which a cause of action for common law negligence can be based.

¶ 27 Defendants disagree, arguing that *Charles,* which was decided after *Quinn* and *Haben,* and the subsequent supreme court case *Wakulich v. Mraz,* 203 Ill.2d 223, 271 Ill.Dec. 649, 785 N.E.2d 843 (2003), effectively overruled those appellate cases even if the supreme court did not explicitly overrule them. They point to language in *Charles* finding "that the General Assembly has preempted the entire field of alcohol-related liability through its passage and continual amendment of the Dramshop Act." *Charles,* 165 Ill.2d at 491, 209 Ill.Dec. 226, 651 N.E.2d 154. Defendants argue that the appellate court in *Wakulich* noted this language in *Charles* and concluded that the "exception" created by *Quinn* did not survive *Charles. Wakulich v. Mraz,* 322 Ill.App.3d 768, 773, 255 Ill.Dec. 907, 751 N.E.2d 1 (2001). In affirming the dismissal of plaintiff's claim in *Wakulich,* our supreme court adhered to its decision in *Charles* that no social host liability

exists in Illinois, even where the host serves alcohol to a minor who subsequently suffers an injury. *Wakulich,* 203 Ill.2d at 237, 271 Ill.Dec. 649, 785 N.E.2d 843. The court in *Wakulich* also reiterated its belief that the General Assembly is the body best equipped to determine social host liability issues. *Id.* at 235–36, 271 Ill.Dec. 649, 785 N.E.2d 843.

¶ 28 Defendants further argue that in response to *Wakulich,* the General Assembly passed the Drug or Alcohol Impaired Minor Responsibility Act (740 ILCS 58/1 *et seq.* (West 2012)), which created a civil cause of action when a person over 18 years of age "willfully supplies" alcohol or illegal drugs to minors who injure themselves or a third party. They contend that this legislative action indicates the General Assembly's desire to preempt the entire field of alcohol related liability, as our supreme court held in *Charles* and *Wakulich,* and because the legislature has been silent regarding the service of alcohol to a person over the age of 18 on the facts we have here, plaintiff has no claim.

¶ 29 We agree with defendants that our supreme court in *Charles* and *Wakulich* held that social host liability does not exist in Illinois common law. However, we disagree with defendants' characterization of plaintiff's claim as one based on social host liability. As the appellate court found in *Quinn,* here "we are faced with a situation which consists of more than the mere furnishing of alcohol. The facts, as alleged in plaintiff's amended complaint, describe a fraternity function where plaintiff was required to drink to intoxication in order to become a member of the fraternity." *Quinn,* 155 Ill.App.3d at 237, 107 Ill.Dec. 824, 507 N.E.2d 1193. We agree with *Quinn* that this situation is distinguishable from the social host circumstances found in *Charles, Wakulich,* and other social host liability cases.

¶ 30 Furthermore, we do not agree that *Charles* and *Wakulich* effectively overruled *Quinn* and *Haben.* When our supreme court discussed preemption in *Charles,* finding that the "General Assembly has preempted the entire field of alcohol-related liability through its passage and continual amendment of the Dramshop Act," it was referring to *Cunningham,* a case involving tavern owners serving alcohol to a paying customer. **451 *14 *Charles,* 165 Ill.2d at 488–89, 209 Ill.Dec. 226, 651 N.E.2d 154. The plaintiff in *Charles,* however, alleged improper service of alcohol to a minor in the host's home. Throughout its opinion our supreme court referred to this as social host liability. The court then held that "[l]egislative preemption in the field of alcohol-related liability extends to social hosts who provide alcoholic beverages to another person, whether that person be an adult, an underage person, or a minor." *Id.* at 491, 209 Ill.Dec. 226, 651 N.E.2d 154. *Charles* did not provide a definition for social host.

¶ 31 Our supreme court revisited the issue in *Wakulich,* another social host liability case involving the service of alcohol to a minor. In *Wakulich,* the court refused to overturn *Charles* and adhered to its decision that "apart from the limited civil liability provided in the Dramshop Act, there exists no social host liability in Illinois." *Wakulich,* 203 Ill.2d at 237, 271 Ill.Dec. 649, 785 N.E.2d 843. The court did provide a general definition of "adult social hosts" in the context of the facts before it as "persons 18 years of age and older who knowingly serve alcohol to a minor." *Id.* at 230, 271 Ill.Dec. 649, 785 N.E.2d 843. However, our supreme court provided no further analysis on the issue.

¶ 32 In fact, contrary to defendants' assertion that our supreme court effectively overruled *Quinn* and *Haben,* thereby extending the definition of social host to fraternities and members who plan an event where pledges are required to consume dangerous amounts of alcohol, *Wakulich* instead shows the court's acknowledgement that this situation is a "factually distinct scenario" from one in which a minor is allegedly pressured to drink at a private residence. *Id.* at 240, 271 Ill.Dec. 649, 785 N.E.2d 843. Although the appellate court in *Wakulich* concluded that "the liability exception created by *Quinn* " did not survive *Charles,* our supreme court in affirming the dismissal in *Wakulich* did not make the same determination. *Wakulich,* 322 Ill.App.3d at 773, 255 Ill.Dec. 907, 751 N.E.2d 1. Rather, our supreme court noted the lower court's conclusion but found it "unnecessary to consider whether the so-called 'exception' to the rule against social host liability recognized by *Quinn* and *Haben* is compatible with our decision in *Charles* because the present case simply does not come within the reach of these two appellate opinions." *Wakulich,* 203 Ill.2d at 239, 271 Ill.Dec. 649, 785 N.E.2d 843. The court recognized that *Quinn* and *Haben* "addressed the limited situation" of illegal or dangerous activities conducted by college fraternities or similar organizations, and that to extend their holdings to a case involving the service of alcohol to a minor at a residence would be a " 'dramatic expansion' " of those cases, "assuming their

continuing viability." *Id.* at 240, 271 Ill.Dec. 649, 785 N.E.2d 843. Our supreme court did not conclusively state that it was overruling *Quinn* and *Haben,* but instead determined that the facts before it were distinguishable from the facts of those appellate opinions. Neither the supreme court nor the General Assembly have conclusively determined otherwise. We find that the holdings in *Quinn* and *Haben* are still viable and, following those factually on-point cases, we hold that plaintiff here has sufficiently alleged a common law cause of action in negligence.

[6] [7] [8] [9] ¶ 33 Plaintiff, however, must still allege sufficient facts to support his negligence claim or face a section 2–615 dismissal upon defendants' motion. A section 2–615 motion to dismiss challenges the sufficiency of the complaint based on defects apparent on its face. *Simpkins v. CSX Transportation, Inc.,* 2012 IL 110662, ¶ 13, 358 Ill.Dec. 613, 965 N.E.2d 1092. In reviewing the sufficiency of a complaint, we **452 *15 take as true all well-pleaded facts and all reasonable inferences drawn from those facts. *Ferguson v. City of Chicago,* 213 Ill.2d 94, 96–97, 289 Ill.Dec. 679, 820 N.E.2d 455 (2004). We also view the allegations in the complaint in the light most favorable to the plaintiff. *King v. First Capital Financial Services Corp.,* 215 Ill.2d 1, 11–12, 293 Ill.Dec. 657, 828 N.E.2d 1155 (2005). Plaintiff, however, must allege sufficient facts to bring the claim within a legal cause of action. *Marshall v. Burger King Corp.,* 222 Ill.2d 422, 429, 305 Ill.Dec. 897, 856 N.E.2d 1048 (2006).

[10] [11] [12] ¶ 34 We recognize that a number of allegations in the complaint are made "upon information and belief." "Where facts of necessity are within defendant's knowledge and not within plaintiff's knowledge, a complaint which is as complete as the nature of the case allows is sufficient." *Yuretich v. Sole,* 259 Ill.App.3d 311, 313, 197 Ill.Dec. 545, 631 N.E.2d 767 (1994). This court has acknowledged that " '[a]n allegation made on information and belief is not equivalent to an allegation of relevant fact' [citation], but at the pleading stage a plaintiff will not have the benefit of discovery tools" to discern certain facts. *Patrick Engineering, Inc. v. City of Naperville,* 2012 IL 113148, ¶ 40, 364 Ill.Dec. 40, 976 N.E.2d 318. However, plaintiff will have knowledge of how he learned of the facts alleged upon information and belief, and the complaint therefore should allege how those facts were discovered. *Id.* Here, plaintiff's counsel attached an affidavit to the complaint stating that the allegations made " 'upon information and belief' are based on [his] reading of various summary reports, recorded witness statements and media reports." The affidavit also states that due to pending criminal proceedings, counsel does not have access to certain defendants and unindicted witnesses requiring him to allege certain facts and conduct as "presently unknown." The use of "upon information and belief" in plaintiff's complaint here does not render the allegations insufficient under section 2–615.

[13] ¶ 35 We now consider the merits of plaintiff's appeal. We review *de novo* the trial court's dismissal of a claim under section 2–615. *Kean v. Wal–Mart Stores, Inc.,* 235 Ill.2d 351, 361, 336 Ill.Dec. 1, 919 N.E.2d 926 (2009). For clarity, we will address the sufficiency of plaintiff's pleadings for each group of defendants specified in the complaint.

[14] ¶ 36 We first consider plaintiff's allegations against the named officers and pledge board members, individually and as officers and pledge board members (counts V, VI), and the active members (counts VII, VIII). The complaint alleged that the officers and pledge board members of the Eta Nu chapter met on October 29 or 30, 2012, and planned and approved of Mom and Dad's night as a pledge event in which participation was required as a condition of membership. On November 1, 2012, these defendants participated in the event which required pledges to visit a list of rooms in the fraternity house. The pledges were given a four-ounce plastic cup by the officers and board members, and in each room the cup was filled with vodka. The participating active members and women in each room asked each pledge a series of questions and after responding the pledges were required to drink from his cup of vodka. The complaint alleged that after progressing through the rooms, each pledge had consumed three to five glasses of vodka in each room in approximately one and a half hours. It further alleged that the event was not sanctioned by NIU **453 *16 and violated the Hazing Act.[2]

2 The Hazing Act defines hazing as when a person "knowingly requires the performance of any act by a student or other person in a school, college, university or other educational institution of this State, for the purpose of induction or admission into any

group, organization, or society associated or connected with that institution" if not sanctioned by the institution and results in bodily harm to any person. 720 ILCS 5/12C–50 (West 2012).

¶ 37 We find that plaintiff's complaint alleged sufficient facts to support his claim that David was required to drink to extreme intoxication in order to become a member of the fraternity, and that this conduct violates the Hazing Act. See *Quinn*, 155 Ill.App.3d at 237–38, 107 Ill.Dec. 824, 507 N.E.2d 1193. The complaint specifically pled that the named officers and pledge board members of the Eta Nu chapter planned the event and required participation by the pledges, and details how their actions and decisions led to David's intoxication. Taking as true all well-pleaded facts and all reasonable inferences drawn therefrom, plaintiff has alleged sufficient facts to bring his claim within a legal cause of action as to these defendants.

[15] ¶ 38 Plaintiff also alleged liability premised on the breach of defendants' duty of due care that arose when they voluntarily undertook to care for the unconscious pledges. In undertaking the care of the pledges, defendants "were obligated to exercise 'due care' in the performance of the undertaking." *Wakulich*, 203 Ill.2d at 242, 271 Ill.Dec. 649, 785 N.E.2d 843. As stated in section 323(a) of the Restatement (Second) of Torts, liability attaches upon defendants' failure to exercise reasonable care in performing a voluntary undertaking if "his failure to exercise such care increases the risk of such harm." Restatement (Second) of Torts § 323(a), at 135 (1965). In *Wakulich*, the plaintiff alleged that the defendants took the minor to the family room for observation after she lost consciousness, observed her vomiting and making gurgling sounds, checked on her the following morning when she was still unconscious, removed her soiled blouse, and placed a pillow under her head to prevent aspiration. They refused to seek medical care and prevented others from obtaining medical care for her. They also refused to take her home or contact her parents. When she was still unconscious, defendants removed the minor from their home. *Wakulich*, 203 Ill.2d at 241, 271 Ill.Dec. 649, 785 N.E.2d 843. Our supreme court found that plaintiff's allegations sufficiently alleged that their conduct increased the risk of harm to her, and the trial court should not have dismissed the counts based on a voluntary undertaking theory. *Id.* at 247, 271 Ill.Dec. 649, 785 N.E.2d 843.

¶ 39 This duty, however, is limited by the extent of the undertaking. *Frye v. Medicare–Glaser Corp.*, 153 Ill.2d 26, 32, 178 Ill.Dec. 763, 605 N.E.2d 557 (1992). Although it may be true as a general proposition that a host who merely allows an intoxicated guest to "sleep it off" on the floor does not assume an open-ended duty of care, plaintiff's complaint alleged more than merely allowing pledges to "sleep it off." See *Wakulich*, 203 Ill.2d at 243, 271 Ill.Dec. 649, 785 N.E.2d 843. The complaint alleged that as the pledges began to lose consciousness, "presently unknown active members" placed them in designated areas throughout the fraternity house. David was placed in a bed where active members tried to orient his head and body so he would not choke on his vomit. Active members occasionally checked on the unconscious pledges and would adjust their positions so they would not choke if they vomited. The complaint alleged that unknown **454 *17 officers and active members discussed whether to seek medical attention for the pledges, but decided not to and told others not to seek medical care or call 911. According to the allegations, defendants effectively took complete charge of the pledges, including David, after they become unconscious. Liberally construed and taken as true, these allegations sufficiently plead a cause of action based on a voluntary undertaking theory.

[16] ¶ 40 Plaintiff has also sufficiently pled a cause of action against the Eta Nu chapter of PKA (counts III and IV), since the elected officers and pledge board members of the Eta Nu chapter were acting within the scope of their authority in planning and executing the event. See *First Chicago v. Industrial Comm'n*, 294 Ill.App.3d 685, 691, 229 Ill.Dec. 198, 691 N.E.2d 134 (1998) (corporate entities are bound by the actions of their officers and directors if performed within the scope of their authority). We are mindful that at this stage, we consider only whether plaintiff sufficiently pled facts to support his claim of negligence. Whether defendants actually required that David and other pledges consume excessive amounts of alcohol for membership into the fraternity, whether the pledges actually felt intense pressure to drink, and whether defendants actually took affirmative measures to care for the unconscious pledges are questions for the trier of fact to decide. As the courts in *Quinn* and *Haben* noted, "[t]o the extent that plaintiff acted willingly, liability can be transferred to him under principles of comparative negligence." *Quinn*, 155 Ill.App.3d at 237, 107 Ill.Dec. 824, 507

N.E.2d 1193. Although we find that the trial court erred in granting the motion to dismiss on counts III, IV, V, VI, VII, and VIII, we make no determination as to defendants' actual liability.

[17] ¶ 41 Next we consider counts I and II, which pertain to defendants PKA Corp. and PKA International. Although plaintiff does not explicitly state that he seeks recovery based on both a direct theory of negligence as well as on a theory of vicarious liability, the language used in these counts appears to reference both theories of liability. Therefore, we will consider whether plaintiff's pleadings sufficiently alleged facts to support both theories of liability.

[18] [19] ¶ 42 Under a theory of vicarious liability, or *respondeat superior*, a principal can be held liable for the negligent conduct of an agent acting within the scope of his or her agency. *Adames v. Sheahan*, 233 Ill.2d 276, 298, 330 Ill.Dec. 720, 909 N.E.2d 742 (2009). The agent's liability is thereby imputed to the principal and generally the plaintiff need not establish malfeasance on the part of the principal. *Vancura v. Katris*, 238 Ill.2d 352, 375, 345 Ill.Dec. 485, 939 N.E.2d 328 (2010). Plaintiff's complaint here alleged that PKA Corp. and PKA International, "through its agents and employees encouraged local chapters, including Eta Nu, to hold events similar to 'Mom and Dad's Night' because they were good for member and pledge retention." However, the complaint also alleged that PKA Corp. and PKA International established a hazing policy precluding a "chapter, colony, student or alumnus" from conducting or condoning hazing activities defined as "[a]ny action taken or situation created, intentionally, whether on or off fraternity premises, to produce mental or physical discomfort, embarrassment, harassment, or ridicule." The policy also stated that hazing activities may include, but are not limited to, the use of alcohol. Plaintiff alleged that David's death resulted from his participation in a pledging event in which agents of PKA Corp. and PKA International, the officers **455 *18 and pledge board members of the Eta Nu chapter of the fraternity, required pledges to consume excessive amounts of alcohol to the point of intoxication. PKA Corp. and PKA International's hazing policy, however, explicitly states that it does not condone such activity thus placing their agents' actions outside the scope of their agency. Therefore, plaintiff's complaint does not state a sufficient claim for vicarious liability in counts I and II and the trial court properly dismissed that claim as to PKA Corp. and PKA International. See *Adames*, 233 Ill.2d at 298–99, 330 Ill.Dec. 720, 909 N.E.2d 742 (conduct of a servant is not within the scope of employment if it is different in kind from what is authorized).

[20] [21] ¶ 43 In counts I and II, plaintiff also alleged direct negligence in that PKA Corp. and PKA International permitted and allowed dangerous pledge events at their local chapters, failed to warn their local chapters about the dangers or risks of requiring the consumption of excessive amounts of alcohol, failed to develop reasonable and effective policies to prevent such dangerous events, and failed to ensure that their local chapters followed policies and procedures regarding proper initiation procedures. Unlike liability based on a theory of *respondeat superior*, a claim of direct negligence requires malfeasance on the part of the principal itself. However, in order to state a cause of action in negligence, plaintiff must establish that defendants owed a duty to David. *McLane v. Russell*, 131 Ill.2d 509, 514, 137 Ill.Dec. 554, 546 N.E.2d 499 (1989).

[22] [23] [24] ¶ 44 To find such a duty, plaintiff and defendant must stand in such a relationship to one another that the law imposes upon the defendant an obligation of reasonable conduct for the benefit of plaintiff. *Id.* at 514–15, 137 Ill.Dec. 554, 546 N.E.2d 499. The mere allegation of a duty is insufficient; instead, the complaint must allege facts from which the law will raise a duty. *Woodson v. North Chicago Community School District No. 64*, 187 Ill.App.3d 168, 172, 135 Ill.Dec. 55, 543 N.E.2d 290 (1989). The absence of factual allegations supporting plaintiff's duty claim justifies dismissal of his pleading. *Rabel v. Illinois Wesleyan University*, 161 Ill.App.3d 348, 356, 112 Ill.Dec. 889, 514 N.E.2d 552 (1987).

¶ 45 In the complaint, plaintiff alleged that PKA Corp. and PKA International "owed plaintiff's decedent a duty to prevent the foreseeable consequences of required excessive consumption of alcohol during initiation ritual, including death." Foreseeability, however, is only one factor in determining the existence of a duty. *Quinton v. Kuffer*, 221 Ill.App.3d 466, 473, 164 Ill.Dec. 88, 582 N.E.2d 296 (1991). This determination should also take into account the likelihood of injury, the magnitude of the burden of guarding against the injury, and the consequences of placing that

burden on defendant. *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill.2d 507, 526, 111 Ill.Dec. 944, 513 N.E.2d 387 (1987). Plaintiff did not allege any of the other elements in determining duty.

¶ 46 Plaintiff also alleged that PKA Corp. and PKA International engaged in the business of recruiting membership into its organizations, encouraged the local chapters to conduct Greek night events, and required pledges and members to adhere to "the fraternity Constitution, Risk Assessment Manual Chapter Codes and its quarterly publication *The Shield and Diamond* and *The Garnet and Gold* pledge manual." Plaintiff alleged that PKA Corp. and PKA International had the authority to "ban and prohibit pledging activities outright," subjected local chapters to annual week-long assessments, and "had the **456 *19 right and the power to expel, suspend or place restrictive remedial conditions" on local chapters and individual members. However, these allegations are insufficient to create a relationship that imposes upon PKA Corp. and PKA International a duty to protect David, as well as the pledges of all their chapters nationally and internationally, from the harm he suffered. The test of agency is whether the principal has the right to control the manner and method in which the agent carries out its duties. *Anderson v. Boy Scouts of America, Inc.*, 226 Ill.App.3d 440, 443, 168 Ill.Dec. 492, 589 N.E.2d 892 (1992). Citing to the principal's bylaws, rules or regulations is insufficient to establish control unless they show direct supervisory authority over how the agent accomplishes its tasks. *Id.* at 444, 168 Ill.Dec. 492, 589 N.E.2d 892. Plaintiff's complaint did not allege that PKA Corp. or PKA International had the right to control the activities local chapters and their members used during the pledging process.

¶ 47 Upon consideration of the other elements of duty, we find that imposition of such a duty when PKA Corp. and PKA International are not alleged to have knowledge of or ability to control the day-to-day activities of their members or pledges, would present an unrealistic burden. See *Rabel*, 161 Ill.App.3d at 360–61, 112 Ill.Dec. 889, 514 N.E.2d 552. Therefore, plaintiff has not alleged sufficient facts to support the duty allegations. Without a sufficient allegation of duty, plaintiff cannot state a legally sufficient claim for negligence. We affirm the trial court's dismissal of counts I and II against defendants PKA Corp. and PKA International.

[25] ¶ 48 In counts IX and X, plaintiff alleged that the named nonmember sorority women who participated in Mom and Dad's Night owed David a duty of reasonable care not to subject him to the excessive consumption of alcohol. However, plaintiff does not allege how, as nonmembers of the fraternity, these women could have required David to drink to intoxication in order to become a member of the fraternity. See *Quinn*, 155 Ill.App.3d at 237–38, 107 Ill.Dec. 824, 507 N.E.2d 1193. They had no authority to determine who would become members of an organization in which they did not belong. There is no language in *Haben* or *Quinn* that would extend such a duty of care to nonmembers of an organization who participate in the event, and we decline to do so here. Therefore, we affirm the trial court's dismissal of plaintiff's claim against nonmembers of the fraternity (counts IX and X).

[26] [27] ¶ 49 Finally, counts XI and XII allege a negligence claim against the landlord of the premises where the event occurred, Pike Alum. The complaint alleged that Pike Alum leased the premises to the Eta Nu chapter when it knew the tenant was conducting dangerous events such as Mom and Dad's Night thereon, it failed to contact the university or law enforcement to alert them to the dangerous activity, and attempted to prevent such activities from taking place "but did so ineffectively." Generally, under Illinois law no duty exists requiring a landowner to protect a person from the criminal actions of a third party unless the criminal conduct was reasonably foreseeable and a special relationship exists between the injured party and the defendant. *Leonardi v. Bradley University*, 253 Ill.App.3d 685, 689–90, 192 Ill.Dec. 471, 625 N.E.2d 431 (1993). Special relationships include: common carrier and passenger; innkeeper and guest; business invitor and invitee; or voluntary custodian and protectee. *Geimer v. Chicago Park District*, 272 Ill.App.3d 629, 632–33, 208 Ill.Dec. 891, 650 N.E.2d 585 (1995). Plaintiff's complaint did not **457 *20 allege a legally-recognized special relationship between David and Pike Alum.

[28] ¶ 50 Nor does the complaint allege that Pike Alum retained control of the premises so as to trigger a duty. Under Illinois law, a landlord is not liable for injuries caused by a dangerous condition on the premises leased to a tenant and under the tenant's control. *Vesey v. Chicago Housing Authority*, 145 Ill.2d 404, 413, 164 Ill.Dec. 622, 583 N.E.2d 538

(1991). Plaintiff asks that we find a duty based upon Pike Alum's alleged knowledge that dangerous events such as Mom and Dad's Night were taking place on the premises, citing a case from another jurisdiction as support (*Oja v. Grand Chapter of Theta Chi Fraternity, Inc.*, 255 A.D.2d 781, 680 N.Y.S.2d 277 (N.Y.App.Div.1998)). However, even if this court were to follow a case which has no precedential authority here, plaintiff's complaint alleged insufficient facts to support his negligence claim. Plaintiff's allegations merely concluded that Pike Alum knew of dangerous events taking place at the fraternity because it is an alumnus of PKA, from reading and receiving reports in newsletters and email alerts, and receiving updates on disciplinary actions taken against Eta Nu and other chapters nationwide. Plaintiff did not allege facts supporting these conclusory allegations. Since plaintiff did not allege a special relationship creating a duty owed by Pike Alum, the trial court properly dismissed plaintiff's claims against Pike Alum (counts XI and XII).

¶ 51 For the foregoing reasons, the judgment of the circuit court is affirmed as to counts I, II, IX, X, XI, and XII. We reverse the trial court's dismissal of counts III, IV, V, VI, VII, and VIII, and remand for further proceedings.

¶ 52 Affirmed in part; reversed in part. Remanded for further proceedings.

Presiding Justice CUNNINGHAM concurred in the judgment and opinion.

Justice CONNORS specially concurred.

¶ 53 Justice CONNORS, specially concurring.

¶ 54 Although the majority and I reach the same conclusion, I find it necessary to write separately to address and attempt to clarify the apparent state of confusion regarding how a plaintiff satisfies the requirements of bringing a cause of action under the Hazing Act. Specifically, I depart from the majority in order to further explain the narrowly tailored duty recognized by the courts in *Quinn* and *Haben*. To be clear, I agree with the majority's analysis of the duty under the Hazing Act as applied to PKA Corp. and PKA International, the nonmember defendants, and premises owner defendants. I also agree with the majority's analysis regarding the plaintiff's satisfaction of the pleading requirements for a negligence claim based on voluntary undertaking, and therefore do not write separately on those issues. Thus, the purpose of this concurrence is to concentrate on the limited issue of addressing and analyzing the duty requirement in a negligence action brought under the Hazing Act against individual members of a fraternity or similar organization, and the local chapter of said organization.

¶ 55 The primary question before this court, as it was in *Quinn*, is whether the local fraternity chapter defendant, Eta Nu chapter of PKA, owed a common law duty to plaintiff to refrain from requiring participation in hazing acts. As the majority suggests, a reviewing court must determine whether plaintiff's complaint comports with the following two essential factors: (1) that plaintiff was required to drink to intoxication in order to join the fraternity, and (2) the legislature has enacted a statute against hazing. **458 *21 *Quinn*, 155 Ill.App.3d at 237–38, 107 Ill.Dec. 824, 507 N.E.2d 1193. In my opinion, plaintiff's complaint clearly satisfies these two requirements. His complaint alleges that "attendance and participation [at Mom and Dad's night] was a mandatory prerequisite to active membership in the fraternity and that [pledges] would be required to drink excessive amounts of alcohol during the event." The Hazing Act is still in force and effect, thus, the legislature has evidenced its intent to discourage hazing conduct.

¶ 56 Looking to the duty analysis in *Quinn*, I call attention to a section of the *Quinn* court's examination that the majority here did not examine in great detail, but which I find necessary to explain the existence of a duty under the Hazing Act. *Supra* ¶ 23. Specifically, I write separately to address the additional steps I believe a reviewing court must complete in order to determine whether the duty created by the Hazing Act forms the basis for a common law negligence action in a particular case. The *Quinn* court looked to the factors outlined in *Lance v. Senior*, 36 Ill.2d 516, 518, 224 N.E.2d 231 (1967), to help determine whether a duty should be placed on the defendant. The *Lance* factors are: (1) the foreseeability of the occurrence, (2) the likelihood of injury, (3) the magnitude of the burden of guarding against it, and

(4) the consequences of placing that burden on defendant. *Id.* I believe it is essential for this court and future reviewing courts to determine on a case-by-case basis whether the facts before it satisfy the *Lance* factors, and thus give rise to a duty. It is not enough to merely look to the two *Quinn* factors when faced with a case brought under the Hazing Act.

¶ 57 I believe this case satisfies all four of the *Lance* factors, but I also believe there are cases that may purport to allege a cause of action under the Hazing Act that would not satisfy the requisite factors, which is why a careful examination of each factor is crucial. Looking to the first *Lance* factor, it was certainly foreseeable that plaintiff and other pledges would become harmfully intoxicated. Plaintiff's complaint alleges that at Mom and Dad's night, the pledges were each given four-ounce plastic cups that were repeatedly filled with vodka in each room the pledges visited. Each pledge was then required to drink the vodka after answering "nonsensical" questions from the pledge board members and female nonmembers. If pledges manifested an unwillingness to drink, they were called "pussies" and "bitches" until they assented. The complaint further alleged that plaintiff's decedent, David, had consumed three to five cups of vodka in each of the seven rooms he visited. This equates to a total of a minimum of 21 cups of vodka. Even assuming, *arguendo,* that each cup only had one ounce of vodka in it, that would still mean that David ingested 21 ounces of vodka in 1 ½ hours. It is clearly foreseeable that requiring a person to consume 21 ounces of vodka in 1 ½ hours could result in harm and even death. In fact, according to plaintiff's complaint, defendant pledge board members knew that it was likely that the pledges would drink to vomit-inducing intoxication, because when the pledges were taken to the house basement once "they were no longer able to walk on their own," they were given buckets that had been decorated by the female nonmember defendants. If defendant pledge board members could not foresee that vomit-inducing intoxication levels were likely to result from their conduct of forced alcohol ingestion, then it begs the question—for what other purpose were the decorated buckets provided?

¶ 58 Further, plaintiff's complaint alleges that "[David] was placed in a bed in his Greek father's room by active member Gregory Petryka who tried to orient his **459 *22 head and body so that if he vomited, he would not choke on it," thus the pledge board members foresaw that the pledges would be so intoxicated that they may even vomit in their sleep, which could cause asphyxiation. In their response brief, the Eta Nu chapter of PKA, PKA Corp., and PKA International stated "the allegations [of plaintiff's complaint] reveal a social drinking party for the pledges in which a few pledges jumped at the chance to overconsume and others were more judicious and other declined." Based on the allegations of plaintiff's complaint, this statement by the Eta Nu chapter of PKA, PKA Corp., and PKA International is a gross mischaracterization of the events in question. Contrary to their contention that a few pledges took it upon themselves to consume alcohol in dangerous and even fatal levels, I believe the foreseeability of injury was overwhelmingly clear to defendants. Additionally, based on these same alleged facts, plaintiff has also satisfied the second *Lance* factor by showing that injury, and even death, was likely.

¶ 59 Turning to the third *Lance* factor, I believe plaintiff has shown that the magnitude in guarding against the injury he suffered was minimal, if not completely avoidable. Simply put, there is no reasonable interest served in engaging in the conduct that is at issue in this case. Requiring teenagers, whether they are minors in the eyes of the law or not, or anyone for that matter, to ingest alcohol to the point of, at a minimum, vomiting on themselves does not further any public policy interest, thus I see no reason to protect such behavior in this case. The burden of guarding against this type of conduct is minimal and I believe our legislature has evidenced its frustration with hazing-related incidents and injuries by enacting the Hazing Act.

¶ 60 Plaintiff has satisfied the fourth *Lance* factor by showing that the burden of placing the consequences on defendant is appropriate. The conduct at issue here that resulted in David's death was squarely within the control of the defendants. That is not to say that ultimately a fact finder may determine their percentage of fault to be less than 100%. As the court in *Quinn* noted, "[t]o the extent that plaintiff acted willingly, liability can be transferred to him under principles of comparative negligence." *Quinn,* 155 Ill.App.3d at 237, 107 Ill.Dec. 824, 507 N.E.2d 1193. The defendant pledge board members and the Eta Nu chapter of PKA are the proper parties to bear the consequences for the conduct that caused plaintiff's injuries.

¶ 61 I also want to emphasize the *Quinn* court's recognition that the mere providing of alcohol was not what gave rise to a common law duty. *Quinn*, 155 Ill.App.3d at 237, 107 Ill.Dec. 824, 507 N.E.2d 1193. Rather, the facts of that case involved something more, namely "that the abuse illustrated * * * could have resulted in the termination of life and that plaintiff was coerced into being his own executioner." *Id.* The situation that the *Quinn* court foresaw almost eerily mirrors the factual scenario alleged in this case. Here, David was forced to consume alcohol, and as a result, his life was terminated.

¶ 62 Additionally, I write separately to expound on the majority's mention of *Quinn*'s acknowledgement that our supreme court has recognized: The violation of a statute or ordinance "designed for the protection of human life or property is *prima facie* evidence of negligence" (Internal quotation marks omitted.) *Supra* ¶ 24 (quoting *Quinn*, 155 Ill.App.3d at 238, 107 Ill.Dec. 824, 507 N.E.2d 1193). Although not addressed by the majority here, the court in *Quinn* further stated: "In order to sustain such a cause of action, two conditions **460 *23 must be met: first, the plaintiff must be within the class of persons the ordinance was designed to protect; and second, the plaintiff must have suffered the type of harm the statute was designed to prevent." (Internal quotation marks omitted.) *Quinn*, 155 Ill.App.3d at 238, 107 Ill.Dec. 824, 507 N.E.2d 1193. Therefore, unlike the majority, I believe reviewing courts must also determine whether these two conditions are met on a case-by-case basis.

¶ 63 Here, the statute under which plaintiff brings his cause of action is the Hazing Act, which reads,

> "A person commits hazing who knowingly requires the performance of any act by a student or other person in a school, college, university, or other educational institution of this [s]tate, for the purpose of induction or admission into any group, organization, or society associated or connected with that institution if:
>
> (a) the act is not sanctioned or authorized by that educational institution; and
>
> (b) the act results in bodily harm to any person." 720 ILCS 12C–50 (West 2012).

¶ 64 It is clear that plaintiff is within the type of persons that the Hazing Act was enacted to protect. David was a college student who wanted to join a fraternity associated with NIU. Plaintiff's complaint alleges specific facts that show that the alleged hazing acts at issue, *i.e.* forcing David to drink alcohol until dangerously intoxicated, was not sanctioned by the institution, and that said conduct resulted in the ultimate harm to plaintiff, his death. Additionally, plaintiff's complaint alleged that, contrary to NIU's policies, "Mom and Dad's Night" had not been sanctioned with NIU.

¶ 65 Plaintiff has satisfied *Quinn*'s narrowly tailored Hazing Act factors by alleging sufficient facts to show that plaintiff was required to drink to intoxication and that the legislature enacted a statute against hazing. Additionally, plaintiff has adequately pled a duty, and ultimately a cause of action, under the Hazing Act by alleging sufficient facts to satisfy the four *Lance* factors. Finally, it is essential that plaintiff was the type of person the Hazing Act was meant to protect, and that he suffered the type of harm that the Hazing Act was designed to prevent. I believe it is the combination of these pleading requirements that allow a plaintiff to adequately set forth the requisite duty element for a common law negligence cause of action brought pursuant to the Hazing Act.

All Citations

2016 IL App (1st) 150128, 56 N.E.3d 1, 404 Ill.Dec. 438

End of Document

Table of Contents for the Record
Bogenberger v. Pi Kappa Alpha

Volume 1 (Cont'd)

Volume 2 (Cont'd)

Volume 4 (Cont'd)

Volume 5 (Cont'd)

Volume 6 (Cont'd)

Volume 7

Volume 8

Volume 8 (cont'd)

Volume 8 (cont'd)

Volume 9 (cont'd)

Volume 14 (cont'd)

Volume 16 (cont'd)