

In the
Supreme Court of Illinois

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

Plaintiff-Appellee,

vs.

ETA NU CHAPTER OF PI KAPPA ALPHA INTERNATIONAL
FRATERNITY AT NORTHERN ILLINOIS, an unincorporated association,
(continued on inside cover),

Defendants-Appellants,

(CAPTION CONTINUED ON INSIDE COVER)

On 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-APPELLEE
GARY L. BOGENBERGER, special administrator
of the Estate of David Bogenberger, deceased

(Answer to briefs of Eta Nu Chapter and fraternity members) **FILED**

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Defendants-Appellants,

and

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.

POINTS AND AUTHORITIES

I. Plaintiff stated a common law cause of action for the death of David Bogenberger as a consequence of the fraternity's pledge hazing event. The fraternity and its members designed the mandatory Mom and Dad's Night to cause pledges to drink to the point of insensate intoxication, violating the anti-hazing statute. Plaintiff's cause of action is independent of and unrelated to social host liability.

<i>Andrews v. Porter</i> , 70 Ill. App. 2d 202, 217 N.E.2d 305 (1966)	35
<i>Ballou v. Sigma Nu General Fraternity</i> , 291 S.C. 140, 352 S.E.2d 488 (1986)	30, 32
<i>Charles v. Seigfried</i> , 165 Ill.2d 482, 651 N.E.2d 154 (1995)	17
<i>Doe v. Psi Upsilon International</i> , 2011 IL App (1st) 110306, 963 N.E.2d 327	36
<i>Ex parte Barran</i> , 730 So. 2d 203 (Ala. 1998)	35
<i>First Nat. Bank in DeKalb v. City of Aurora</i> , 71 Ill. 2d 1, 373 N.E.2d 1326 (1978)	36
<i>Fregeau v. Gillespie</i> , 96 Ill. 2d 479, 451 N.E.2d 870 (1983)	23
<i>Grenier v. Comm'r of Transp.</i> , 306 Conn. 523, 51 A.3d 367 (2012)	36
<i>Haben v. Anderson</i> , 232 Ill.App.3d 260, 597 N.E.2d 655 (1992)	passim
<i>Howe v. Clark Equip. Co.</i> , 104 Ill. App. 3d 45, 432 N.E.2d 621 (1982)	35
<i>Krueger v. Fraternity of Phi Gamma Delta, Inc.</i> , 004292G, 2001 WL 1334996 (Mass. Super. May 18, 2001)	30
<i>Lance v. Senior</i> , 36 Ill.2d 516, 224 N.E.2d 231 (1967)	32

<i>Nisbet v. Bucher</i> , 949 S.W.2d 111 (Mo. Ct. App. 1997).....	35
<i>Noyola v. Board of Education of the City of Chicago</i> , 179 Ill.2d 121, 688 N.E.2d 81	28
<i>Oja v. Grand Chapter of Theta Chi Fraternity, Inc.</i> , 174 Misc.2d 966, 667 N.Y.S.2d 650 (1997).....	30, 35
<i>People v. Anderson</i> , 148 Ill.2d 15, 591 N.E.2d 461 (1992)	17
<i>Pielet v. Pielet</i> , 2012 IL 112064, 978 N.E.2d 1000	25
<i>Platinum Partners Value Arbitrage Fund, Ltd. P'ship v. Chicago Board of Options Exchange</i> , 2012 IL App (1st) 112903, 976 N.E.2d 415	15
<i>Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity</i> , 155 Ill.App.3d 231, 507 N.E.2d 1193 (1987)	passim
<i>Reed v. Wal-Mart Stores, Inc.</i> , 298 Ill. App. 3d 712, 700 N.E.2d 212 (1998)	16
<i>State v. Brown</i> , 90 Ohio App.3d 674, 630 N.E.2d 397 (1993).....	30
<i>Wakulich v. Mraz</i> , 203 Ill.2d 223, 785 N.E.2d 843 (2003)	passim
<i>Williams v. Wendler</i> , 2007 WL 2410094 (S.D. Ill. 2007)	29

II. Plaintiffs alleged that the fraternity members voluntarily assumed a duty to care for the pledges when they monitored them with breathalyzers, placed the insensate pledges in rooms designated earlier for that purpose as part of the planning, and ordered others not to obtain medical care. The appellate court properly found that sufficiently stated a cause of action for a voluntary undertaking.

<i>Borcia v. Hatyina</i> , 2015 IL App (2d) 140559, ¶ 23, 31 N.E.3d 298	39
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<i>Coleman v. Hinsdale Emergency Med. Corp.</i> , 108 Ill.App.3d 525, 439 N.E.2d 20 (1982)	40, 47
<i>Figueroa v. Illinois Masonic Center</i> , 288 Ill.App.3d 921, 681 N.E.2d 64 (1997)	43
<i>Gendelman v. Glenbrook N. High Sch.</i> , 03 C 3288, 2003 WL 21209880 (N.D. Ill. May 21, 2003)	47
<i>Haben v. Anderson</i> , 232 Ill.App.3d 260, 597 N.E.2d 655 (1992)	39
<i>Holton v. Resurrection Hospital</i> , 88 Ill.App.3d 655, 410 N.E.2d 969 (1980)	45
<i>In re Estate of DiMatteo</i> , 2013 IL App (1st) 122948,, 995 N.E.2d 420	44
<i>Norman v. Brandt</i> , 397 Ill. App. 3d 1074, 929 N.E.2d 14 (2010)	39
<i>Patrick Engineering, Inc. v. City of Naperville</i> , 2012 IL 113148, 976 N.E.2d 318	45
<i>Skolnik v. Allied Prop. & Cas. Ins. Co.</i> , 2015 IL App (1st) 142438, 45 N.E.3d 1161	41
<i>Sullivan v. Edward Hosp.</i> , 209 Ill. 2d 100, 806 N.E.2d 645 (2004)	44
<i>Wakulich. Wakuli</i> , <i>ch v. Mraz</i> , 203 Ill. 2d 223, 785 N.E.2d 843 (2003)	39, 44
<i>Zabel v. Cohn</i> , 283 Ill. App. 3d 1043, 670 N.E.2d 877 (1996)	43

NATURE OF THE CASE

David Bogenberger was a pledge of the Eta Nu chapter of Pi Kappa Alpha International Fraternity at Northern Illinois University. On November 1, 2012, the fraternity required David and his fellow pledges to participate in an annual fraternity pledge event called Greek Mom and Dad's Night. The fraternity sent its pledges from room to room in the fraternity house where members, assisted by women non-members, asked nonsensical questions. When pledges answered "incorrectly", defendants directed them to drink cups of vodka. The fraternity intended that the pledges become intoxicated, setting aside areas to which they 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' conduct, in violation of the Hazing Act, negligently caused David's death. Defendants moved to dismiss, claiming social host immunity under the Dram Shop Act. The circuit court dismissed the complaint. The appellate court reversed as to local chapter Eta Nu 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.

The question raised on the pleadings is whether the complaint states a cause of action as to local chapter Eta Nu and the fraternity members.

ISSUES PRESENTED FOR REVIEW

The issues presented for review are:

1) Whether the appellate court correctly found that Illinois recognizes a cause of action for the death of pledge David Bogenberger resulting from defendants' hazing ritual; and

2) Whether the appellate court correctly found that the complaint stated a cause of action against the fraternity and its members for their negligence based on their voluntarily undertaking to care for pledge David Bogenberger.

STATUTE INVOLVED

720 ILCS 120/5. (Now 720 ILCS 5/12C-50) (with changes by amendment)

(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

This section is identical to the Facts recited in plaintiff's brief as appellant in No. 120951. 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 the 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.

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-A5 (¶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

Pledges 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-A12 (¶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 A9-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 Burbach, 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

Plaintiffs 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. Plaintiff stated a common law cause of action for the death of David Bogenberger as a consequence of the fraternity's pledge hazing event. The fraternity and its members designed the mandatory Mom and Dad's Night to cause pledges to drink to the point of insensate intoxication, violating the anti-hazing statute. Plaintiff's cause of action is independent of and unrelated to social host liability.²

Standard of Review

Review of an order dismissing a cause of action under Section 2-615 is *de novo*. The court accepts all well pleaded facts as true and draws all reasonable inferences in favor of the plaintiff. Dismissal 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.

Argument

Introduction

The key to this appeal is found in the statement at page 10 of the fraternity member's brief. They accuse the appellate court of improperly recognizing a cause of action for injuries resulting from the consumption of alcohol, termed social host liability. However, that is not what the appellate court did and that makes all the difference in the outcome. The appellate court's decision reflects their clear understanding that this Court has declined to recognize social host liability and their decision does not challenge that rule. In addition, the court below had no reason to address social host

² This brief answers the appellant briefs of both the Eta Nu chapter and the fraternity members.

liability because plaintiff's complaint does not rely on social host liability. Instead, plaintiff's cause of action is founded on recognized common law principles of negligence.

All defendants, both the appellants here and the appellees in the consolidated case, have attempted to reframe plaintiff's cause of action. However, a plaintiff is the master of his complaint. *Reed v. Wal-Mart Stores, Inc.*, 298 Ill. App. 3d 712, 718, 700 N.E.2d 212, 215-16 (1998). Here, plaintiff's complaint rests on hazing, not social host liability, as the appellate court recognized. Defendants do not get to reshape the action to their advantage.

The circuit court made that mistake, at defendants' bidding. Its critical error was that it misguidedly viewed this as a social host matter rather than a hazing matter. Once that court started down that erroneous path, guided by defendants, it inevitably arrived at the wrong endpoint. If the circuit court had stepped back and looked at the cause of action as a whole as the appellate court did, rather than focusing on only the alcohol aspect of a much more complex scenario; it would have recognized that this case falls under the hazing rubric of *Quinn* and *Haben*, not the social host rubric of *Charles* and *Wakulich*.

The circuit court would also have seen, again as the appellate court recognized, that *Charles* did not abrogate either *Quinn* or *Haben* for the reason that the two lines of cases address fundamentally different kinds of

claims. *Charles* and *Wakulich* address social host liability whereas *Quinn* and *Haben* address hazing. *Charles v. Seigfried*, 165 Ill.2d 482, 651 N.E.2d 154 (1995); *Wakulich v. Mraz*, 203 Ill.2d 223, 233, 785 N.E.2d 843, 850 (2003); *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 155 Ill.App.3d 231, 507 N.E.2d 1193 (1987); *Haben v. Anderson*, 232 Ill.App.3d 260, 265, 597 N.E.2d 655, 684 (1992) (noting that the requirement of drinking as part of pledging distinguished the fraternity scenario from a purely social scenario).

The circuit court's misunderstanding fatally undercut its reasoning, and the same misunderstanding by defendants fatally undermines their arguments here. Hazing, an activity the Illinois legislature condemns, is a separate topic from social host use of alcohol. Indeed, the legislature considered hazing sufficiently serious to make it a felony if it results in great bodily harm or death, as occurred here. 720 ILCS 5/12C-50. When they did that, the legislature acted with full knowledge of *Haben* and *Quinn* and yet declined to create an exception for those aspects of hazing involving alcohol.

Charles and Wakulich did not overrule Quinn and Haben.

The defendant fraternity chapter and its members insist *Charles* and *Wakulich* effectively overruled *Quinn* and *Haben*.³ *Charles v. Seigfried*, 165 Ill.2d 482, 651 N.E.2d 154 (1995); *Wakulich v. Mraz*, 203 Ill.2d 223, 785 N.E.2d 843 (2003).

³ In 1992, this Court had already expressed its familiarity with *Quinn* as a civil tort liability case. *People v. Anderson*, 148 Ill.2d 15, 29, 591 N.E.2d 461, 468 (1992).

The distinction between the cases of *Charles* and *Wakulich*, and the *Quinn* and *Haben* cases on which plaintiff relies, is that they involve distinctively different kinds of claims. As noted, *Charles* and *Wakulich* were purely social host cases. The plaintiff in *Charles* argued that the common law provided a duty and consequently a cause of action for negligently serving alcohol to a minor. *Charles, supra*, at 483, 651 N.E.2d at 155. The same was true in *Wakulich*. Neither plaintiff alleged conduct that was the subject of the Hazing Act.

The conduct under attack there arose in a purely social setting, unrelated to organizational activity or enterprise, and the complaint focused solely on serving alcohol. This Court in *Charles* simply followed its earlier precedent and held that the history of the Dram Shop Act showed a legislative preemption of social host liability for injuries resulting from the sale or gift of alcohol. It noted that courts had always found no common law cause of action for injuries arising from the sale or gift of alcohol. *Id.* at 486, 651 N.E.2d at 157.

In the case before this Court, as in *Quinn* and *Haben*, the focus was demonstrably different. The Court is not faced with an alcohol related social host context. Plaintiff alleged hazing, not furnishing alcohol, and that the hazing occurred in a structured setting in violation of a statute specifically barring such behavior. The context of the conduct here was thus much

narrower than in *Charles*. The event was intended to harass and physically affect the pledges: it was not a social event of mutual interest and conduct.

The fraternity believed its hazing event would create some kind of bond between active members and pledges. The alcohol just happened to be the mechanism chosen to produce that result. It could have as easily been drugs, physical abusive, or orders to accomplish some dangerous task, conduct seen in other hazing cases. R. C3885 (containing fraternity description of kinds of hazing); C3965 (v16) (list of activities defined as hazing, from another school). Regardless of the particular hazing mechanism, defendants' conduct fell squarely within the scope of the conduct regulated by the Hazing Act. Recovery is thus premised on an entirely different basis than in *Charles*.

The *Wakulich* court did not find it necessary to even consider what it called the "so-called 'exception' " to the rule against social host liability, referring to the hazing claim allowed in *Quinn*. *Wakulich, supra* at 239, 785 N.E.2d at 852. The phrasing showed that this Court in *Wakulich* did not really consider *Quinn* and *Haben* to be exceptions to social host liability. Rather, its phrasing implicitly recognized that *Quinn* and *Haben* were instead based on hazing, the kind of conduct barred by the Hazing Act. *Wakulich* specifically said the case before it did "not come within the reach of these two appellate opinions", referring to *Quinn* and *Haben*. It noted that those latter cases addressed claims where a college organization required

those seeking membership to engage in “illegal and dangerous activities.” *Id.* The case before it did not.

That phrasing implicitly recognized the specific scope of the Hazing Act because this Court in distinguishing *Quinn* and *Haben* there focused not on alcohol use but rather on the Hazing Act’s ban against *any* conduct required for admission to an organization and likely to lead to injury. *Wakulich* then noted with approval that the appellate court in another case had rejected application of *Quinn* and *Haben* to situations other than those involving college hazing. *Wakulich, supra* at 240, 785 N.E.2d at 853. The *Wakulich* decision simply limited *Quinn* and *Haben* to their facts, and plaintiff here seeks nothing more than to enforce the rule set out in *Quinn* and *Haben*.

*The alleged negligent conduct fell squarely within
the scope of the conduct addressed by the Hazing Act.*

David Bogenberger was not a guest at a social party. This was not an evening of dining and drinking with friends. Rather, this was an official and indeed mandatory fraternity event. Its entire focus and purpose was hazing of fraternity pledges by fraternity members. That context is critical because the logical focus is then on the event as a whole, not the particular instruments of hazing used in the event. That implicates the Hazing Act, the statute which served as the foundation for Illinois courts’ recognition of a common law cause of action in such circumstances as far back as 1987. *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 155 Ill.App.3d 231,

507 N.E.2d 1193 (1987). Plaintiff has a cause of action for hazing, not a cause of action for “alcohol related liability” as the defendant members phrase it. Def. Members br. at 22. To hold otherwise would create an effective exception to civil liability for hazing where the instrument of choice is alcohol rather than fists, feet or paddles.

The members’ brief refers to persons who choose to drink to join a fraternity (Members br. at 22), as if that were all that was going on here. But that is a far cry from what hazing is all about, as will be explained below. Hazing is not drinking at a party and trying to frame it in that fashion both demeans and disguises the seriousness of the conduct at issue.

In the same vein, the members continue their attempt to reframe the case, comparing a fraternity using alcohol to haze pledges to any other *social* host scenario and referring to drinking in “a social setting”. Members br. at 22. To the contrary, studies show and courts have accepted that hazing whether with or without alcohol is far removed from a social setting. The members repeat that contention at page 24, arguing that the appellate court wrongly imposed liability on the fraternity despite the fact this Court has ruled that the Dram Shop Act shields social hosts. They continue to insist on equating social hosts with institutions engaging in hazing when there is no such comparison. The two scenarios are simply dissimilar. Trying to compare the two does not profitably move the analysis forward.

*The legislature treats hazing as conduct distinct
and separate from social host liability.*

The significance of the lapse of time between *Quinn* and the case before this Court is that the legislature has known for 28 years that *Quinn* drew a distinction between the hazing conduct in the case before it and the conduct seen in the typical social host case. It also knew that the *Quinn* court recognized a common law cause of action for injuries caused by hazing even where consumption of alcohol was involved.

Despite that, the legislature has not seen a need to amend either the Hazing Act or the Dram Shop Act by restricting or broadening either one. Instead, it has implicitly accepted *Quinn's* distinction between those two areas of law. It has done nothing to undercut *Quinn's* premise, i.e., that hazing is a separate type of conduct from social host liability, even though the legislature has had occasion to examine both statutes in the interim.

That brings into play the pronouncement in *Wakulich* where this Court emphatically reiterated a fundamental principle for construing statutes. Where the legislature elects not to amend a statute after a court construes that statute, courts presume the legislature acquiesced in the court's interpretation of the legislature's intent as to that statute. *Wakulich v. Mraz*, 203 Ill.2d 223, 233, 785 N.E.2d 843, 850 (2003). That has always been the rule. For example, this Court noted years ago that the legislature had not changed a particular statute in the three years elapsed since the court construed that statute, emphasizing that the legislature might have

done that if they thought the court's interpretation was contrary to what they intended. *Fregeau v. Gillespie*, 96 Ill. 2d 479, 486, 451 N.E.2d 870, 873 (1983) (taking into account that legislature had not changed an act in response to judicial decision construing that act three years earlier).

Defendants argue that the legislature has not amended the Dram Shop Act to broaden its reach to social host liability, and from that conclude that the legislature did not want to allow hazing claims where alcohol was the instrumentality. However, it is equally true that the legislature has not amended the Hazing Act to exclude alcohol related hazing from the kinds of hazing subject to its restrictions nor taken any action to block alcohol related common law hazing claims.

Indeed, to the contrary, the legislature has showed it considers such hazing conduct particularly deserving of sanction by raising the criminal penalty. The hazing statute at issue in *Quinn* was amended in 1996 to make hazing a felony if it causes serious injury or death. Compare Ill.Rev.Stat. 1985, ch. 144, par. 221 (at issue in *Quinn*) with 720 ILCS 5/12C-50 (current version). Given that the legislature's action stresses curbing hazing of all kinds, it would seem logical to conclude that the legislature would recognize if not applaud the contribution to that goal made by the court's recognition of common law hazing actions.

Defendants contend this Court should not consider legislative history because the appellate court did not do so. Members br. at 23. The likely

answer for that omission in the decision below is that the existence of a common law remedy for hazing related injury is so clear that the court did not feel a need to consult legislative history. If the court had looked there, they would have found that while the legislature in 1995 was looking at the Act in an effort to avoid a trial court's finding that it was unconstitutional, members expressed concern with deaths and injuries from hazing that were occurring with some frequency. 89th General Assembly, House Proceedings, 3/21/95, at page 125; App. at A40. That is logical given that hazing is woven into the fabric of student culture and alcohol plays a major role. *Hazing in View: College Students at Risk*, Allan and Madden, at 23, 36-37 (3/11/08); stophazing.org/wp-content/uploads/2014/06/hazing_in_view_web1.pdf (last viewed 1/4/18).

Legislators referred to the incident at Western Illinois underlying the *Haben* case, noting it was part of the pledging process for membership. *Id.* at 128; App. at A43. The sponsor lectured the Greek system, saying it would have to take a closer look at what they sanction. *Id.* at 129; App. at A44. The sponsor specifically used alcohol consumption in hazing as an example of what was being barred. *Id.* at 130; App. at A45. The bill was intended to bring accountability to fraternities engaging in alcohol based hazing. *Id.* at 130, 138; App. at A45, A49. The sponsor similarly expressed concern about the current climate at colleges. *Id.* at 142; App. at A50. Another member spoke of a different incident and said the school was being sued, showing the

legislature was also aware of common law tort claims arising out of hazing incidents. *Id.* at 134; App. at A48.

The more critical legislative history followed in 2013. Defendants' briefs overlook that the Hazing Act was in fact substantively amended again in 2012, effective in 2013. The legislature added a reporting requirement to ensure that teachers and coaches who became aware of hazing reported it to the appropriate supervising school official, and made it gender neutral. 720 ILCS 5/12C-50.1. That bill was in response to hazing in the sponsoring representative's district. He was referring to an incident at Maine South High School in 2012 which led to civil suits against the school and coaches that year. 98th General Assembly, House Proceedings, 4/12/13, at page 112; App. at A35; dailyherald.com/article/20161108/news/161108-996/ (last visited 1/22/17) (reporting settlement of the action and reflecting the dates).

By that time, *Quinn* had been in the books for 26 years and *Haben* for 21 years. The legislature is presumed to have been aware of both cases and that both cases recognized common law actions resting on hazing involving alcohol. *Pielet v. Pielet*, 2012 IL 112064, ¶ 48, 978 N.E.2d 1000, 1013 (court noted legislature had revisited and revised the statute at issue on multiple occasions over a substantial period of time after its judicial construction without changing it). The legislators were expressly aware that alcohol is often used in fraternity hazing, they knew hazing remained a significant

problem, and they knew courts were looking at the Hazing Act to set the standard of care in civil hazing cases based on common law.

The fact that the 2013 amendment was motivated by a civil suit (which led to criminal charges) also shows the legislature was aware that the Hazing Act was relevant to and would support common law negligence claims. If that were not enough, one representative noted that what he called crafty attorneys would be filing civil actions on behalf of hazing victims.⁴ *Id.* at 121-22; App. at A36-A37. The legislature was also clearly aware that hazing conduct involving alcohol consumption generally remained an issue, evidenced by the fact that one representative mentioned this very case. *Id.* at 129; App. at A39.

Despite all that, the legislature did nothing to undo the holdings of *Quinn* and *Haben* or limit the ability of hazing victims to point to the Hazing Act as the standard of care. Consequently, under well-known guidelines for determining legislative intent, courts must presume that the legislature approves actions like this. The defendant members add an argument that the presumption of legislative acquiescence to judicial interpretation of statutes does not apply here because the relevant decision comes from an intermediate appellate court. Members br. at 23. The authority they cite (*Hampton*) says only that this Court is the final arbiter of the law, not that

⁴ That undercuts the members' argument at page 17 that the legislature never referred to possible tort liability.

the legislature does not rely on intermediate appellate court opinions. There is no authority for their contention.

The members also argue that the absence of any reference to *Quinn* or *Haben* in the 1995 legislative history is significant. Members br. at 14. Their implication is that *if* the legislature had acknowledged either case while amending the Act, that would “significantly” reflect legislative approval of civil tort actions for hazing including actions such as this based on alcohol consumption. Given that the legislative history *does* show extensive legislative knowledge of hazing incidents and issues and specific mention of civil actions, it follows from defendants’ argument that the legislature *did* implicitly approve civil tort actions for hazing including actions based on alcohol related incident.

Defendants essentially ask this Court to excise alcohol related hazing cases from the arena of common law hazing cases even though the legislature by way of the amendment creating a felony sent the message that it wants to prevent serious hazing of *any* kind. Defendants’ construction of the Hazing Act would produce exactly the opposite of the legislature’s manifest intent, a scenario where alcohol related kinds of hazing would be tolerated.

The legislature’s decision not to amend the Hazing Act by denying its relevance in *Quinn*-type claims or otherwise move to block common law hazing actions involving alcohol implicitly endorsed the right to bring claims for injury or death resulting from hazing regardless of the hazing mechanism

producing the injury or death. The Hazing Act sets the standard of care for common law claims seeking compensation for injury or death regardless of whether the mechanism of the hazing related injury is physical attack, mental abuse, performing dangerous stunts or drinking lethal amounts of alcohol. *Noyola v. Board of Education of the City of Chicago*, 179 Ill.2d 121, 129, 688 N.E.2d 81, 84 (statutes designed to protect human life set the standard of care required of a reasonable person).

The continued side by side existence of the two statutes (Dram Shop and Hazing Act) as construed by the courts without change implicitly shows that the legislature recognizes a distinction between claims brought for injuries or death caused by social host conduct in serving alcohol and claims brought for injuries or death caused by hazing. The claims are distinct and different because the context of the conduct in each scenario is so different, a point explicitly recognized by the *Quinn* court. Indeed, the distinction between the two situations, social drinking and organizational hazing, was critical to that court's analysis.

--Hazing differs from social situations.

In distinguishing hazing from social situations, the *Quinn* court specifically noted the social pressure that exists once a student pledges a fraternity. *Id.* at 238, 507 N.E.2d at 1198. Not every reader might share a high opinion of fraternities or the value of their role in education or life. However, as that decision recognized, the relevant perspective is the

viewpoint of the young student who has pledged a fraternity with the goal of being accepted as a member. That person puts a valued status on membership, as alleged here, and that in turn drives their behavior in such circumstances. *Haben v. Anderson*, 232 Ill.App.3d 260, 262, 597 N.E.2d 655, 656 (1992); App. at A40 (§5) (allegation that membership was a highly valued status). That is entirely different from the social dynamics in a typical social environment.

As one author of over 500 articles on fraternities noted, students are moved to join fraternities because at that age they are looking for acceptance, having left behind all they are familiar with. They don't want to be left behind or be friendless at college; many are looking for leadership experience and hoping to build their resume. Thefraternityadvisor.com/reasons-why-guys-join-a-fraternity/ (last viewed July 17, 2015). That scenario and the hazing that often goes with admission into a fraternity is nothing like the simple social gathering painted by defendants.

The need to join is a powerful influence on behavior of students in such situations. Ramapo Journal of Law & Society, *Effects of Hazing on Student Self-Esteem* (thesis) at pp. 2, 3 (11/23/16, at ramapo.edu/law-journal/thesis/effects-hazing-student-self-esteem-study-hazing-practices-greek-organizations-state-college/ (last visited). Courts have recognized the social "power dynamics" at work in such situations. *Williams v. Wendler*, 2007 WL 2410094 at *4 (S.D. Ill. 2007), *aff'd* 530 F.3d 584 (7th Cir. 2008). As

a New York court put it, pledges trade their insecurities and free will for the promise of acceptance and prestige that fraternity membership appears to confer. A jury might find that the pledge's acceptance of hazing as the price of admission to the fraternity's acceptance is not truly voluntary. *Oja v. Grand Chapter of Theta Chi Fraternity, Inc.*, 174 Misc.2d 966, 968-69, 667 N.Y.S.2d 650, 652 (1997); *State v. Brown*, 90 Ohio App.3d 674, 686, 630 N.E.2d 397, 404 (1993) (referring to the prestige of membership which motivates pledges).

Oja is also noteworthy because of its reliance on the philosophy underlying both *Haben* and *Quinn*. The *Oja* court agreed with the assessment in those cases of the enormous peer pressures on young men in this scenario and acknowledged the coercive effect of the initiation ritual. It held that scenario presented questions for a trier of fact.⁵ See also, *Krueger v. Fraternity of Phi Gamma Delta, Inc.*, 004292G, 2001 WL 1334996, at *4 (Mass. Super. May 18, 2001) (ruling that coercion could be inferred).

A pledge by definition wants to join the fraternity and the very act of wanting to join shows how much value that person puts on becoming a member. Pledging is not an act taken lightly by students because it takes significant personal input and time and amounts to a significant prospective social commitment. The *Quinn* court noted that the fraternity system creates social pressure. The court said "It can be assumed that great social pressure

⁵ The nature of the social pressures will be described through expert testimony at trial. See, e.g., *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 153, 352 S.E.2d 488, 496-97 (1986) (expert testified about group dynamics, a subject beyond a juror's ken).

was applied to (the pledge) to comply with the fraternity's membership 'qualifications', perhaps to the extent of blinding (himself) to any dangers he might face." *Quinn, supra*, at 237, 507 N.E.2d at 1197.

The pledge is like a job applicant who has been hired but is working with a company only on a probationary basis pending final approval, waiting for the employer to see how the applicant fits in. The applicant not only wants the position but by that point is invested in the hiring process and very much wants the outcome to be favorable. As the court noted, those in charge control the outcome and they consequently are in position to exert real and effective social pressure. The applicant, be it a pledge or otherwise, is particularly susceptible to instructions from those occupying a position superior to him, regardless of whether that instruction is direct or implied. Those in the superior position can effectively coerce the applicant by their directions or suggestions. *Id.* at 238, 507 N.E.2d at 1198.

That is entirely unlike the social function described by defendants where someone simply offers a drink to another person in a neutral atmosphere. The critical social-pressure element is missing in that latter context where each enjoys equal status. It is the social pressure element and the effectiveness of that pressure which created the need for the Hazing Act and for similar laws in other states.⁶ The legislature was aware that persons

⁶ Forty four states have anti-hazing laws. Hazingprevention.umd.edu/HazingPrevention/HazingStatistics.aspx, citing Alfred University Study, Drs. Pollard and Allen, et al., (1999).

under that kind of social pressure might not exercise the adult common sense which would ordinarily govern their conduct in group situations. The Act acknowledged this kind of situation, where someone desiring admission to an organization operating within the education system must go through hazing to reach that goal.

The legislature implicitly recognized that the social dynamics in a hazing scenario are very different from those in an everyday social scenario. The young man seeking fraternity membership is more likely to acquiesce to directions or suggestions about behavior that he or she would never entertain in a normal social context. That is presumably why the legislature made such conduct illegal and why it has not moved to change the case law allowing civil hazing actions.

Plaintiff's claim satisfies the traditional duty analysis.

In determining whether there is a common law duty that would support a claim for 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); *Ballou v. Sigma Nu General Fraternity*, 291 S.C. 140, 146-47, 352 S.E.2d 488, 492-93 (1986). The *Sigma Nu* court, using a duty analysis like that used in Illinois, had no difficulty finding both a duty under common law and a breach of that duty, in a very similar hazing event.

Foreseeability is obvious. This type of incident, where pledges suffer injury as the result of coerced activities, has historically been associated with fraternities and sororities. For example, see *The Dark Power of Fraternities*, Caitlin Flanagan, *The Atlantic*, March 2014; theatlantic.com/features/archive/2014/02/the-dark-power-of-fraternities/357580 (last visited 7/17/15); R. C3968 (describing nationwide problems at a large fraternity). The consequences of hazing are common knowledge.

[En.wikipedia.org/wiki/List_of_hazing_deaths_in_the_United_States](http://en.wikipedia.org/wiki/List_of_hazing_deaths_in_the_United_States) (last visited 11/23/16); hanknuwer.com/articles/hazing-deaths/ (a compilation often referred to in articles addressing hazing). As to the likelihood of injury from hazing, coercing consumption of alcohol at potentially fatal levels is surely likely to lead to injury, thus satisfying that factor.

As to the third factor, there is no burden caused by requiring a fraternity and its members to guard against or refrain from hazing because that is already the law and obeying the law is never an undue burden. Finally, the only consequence of finding a duty not to coerce pledges with alcohol or otherwise would be to save lives and preserve the dignity of the institutions involved. That surely justifies a duty.

The facts alleged show a duty and a cause of action under *Quinn, supra*, and *Haben v. Anderson*, 232 Ill.App.3d 260, 597 N.E.2d 655 (1992), for violating that duty. The facts supporting a duty are set out in the Statement of Facts and will only be summarized here. Pledging this fraternity involved

a series of events intended to familiarize active members with pledges. App. at A19 (¶3). The members held the fatal “Mom and Dad’s Night” event at the fraternity house. App. at A19 (¶4). The very fact it was held at the “institution” and involved members emphasized this was not just a social function but rather an official fraternity event with all that accompanies such an event.

Pledges were misled into believing there was a rational purpose for the event. They were told it was to allow them to learn the identities of their Greek father and mother and encourage a mentoring relationship with those persons. App. at A21 (¶13). They were given a specific date and time to report, again an element removing it from the realm of the usual social scenario where one chooses whether to come and when to come. App. at A20 (¶12). Finally, the event was mandatory and a prerequisite for membership, an allegation more concrete than the *de facto* requirement for membership found sufficient in *Haben* to justify a hazing claim under *Quinn*. App. at A20 (¶11), 22-23 (¶25); *Haben, supra*, at 263, 597 N.E.2d at 657.

All that shows the conduct of the various defendants fell within the scope of the conduct made illegal by the Hazing Act and that the appellate court was correct when it found that the complaint stated a common law cause of action for hazing.

Defendants argue that the criminal remedy provided by the Hazing Act is more than sufficient and that plaintiff should not be given a private

right of action under that statute. Eta Nu br. at 24-26; Members br. at 19. The argument by the defendant members is particularly remarkable because they had earlier acknowledged, at page 11, that the issue here is whether plaintiff has a common law right of action (not a private right of action under the statute). The appellate court agreed, saying it was deciding whether there exists a cause of action under the common law for injury caused by hazing. *Bogenberger, supra* at ¶23.

This Court could find a private right of action but plaintiff does not require the court to go that far because he has a common law cause of action, just as the court below found. Other states that have examined this kind of scenario concur. One explained that a violation of the state's criminal-hazing statute constituted both negligence per se and common law negligence. *Ex parte Barran*, 730 So. 2d 203, 204 (Ala. 1998). Another noted that all the acts proscribed by the hazing statute were also actionable at common law. *Nisbet v. Bucher*, 949 S.W.2d 111, 117 (Mo. Ct. App. 1997). Other states have acknowledged that Illinois recognizes a common law action for injury from hazing. *Oja v. Grand Chapter of Theta Chi Fraternity, Inc.*, 174 Misc.2d 966, 969, 667 N.Y.S.2d 650, 652 (1997).

We also know that the existence of a criminal statute does not negate a common law cause of action based on conduct which is also the subject of the criminal statute. *Andrews v. Porter*, 70 Ill. App. 2d 202, 211, 217 N.E.2d 305, 310 (1966); *Howe v. Clark Equip. Co.*, 104 Ill. App. 3d 45, 50, 432 N.E.2d 621,

624–25 (1982) (court assumed both the criminal prosecution and the common law action exist simultaneously). That is also seen in a Connecticut hazing case where the trial court had ruled that the plaintiff erred by bringing his claim under common law rather than as a private right of action under the anti-hazing statute. The appellate court reversed, finding a common law cause of action was available in addition to the right of action under the statute. *Grenier v. Comm'r of Transp.*, 306 Conn. 523, 526–27, 51 A.3d 367, 372–73 (2012).

In any event, this court has held that violation of a statute like the Hazing Act designed to protect human life “is *prima facie* evidence of negligence, and that the party injured thereby has a cause of action, provided he comes within the purview of the particular ordinance or statute, and the injury has a direct and proximate connection with the violation.” *First Nat. Bank in DeKalb v. City of Aurora*, 71 Ill. 2d 1, 9, 373 N.E.2d 1326, 1330 (1978). The appellate court in *Quinn* recognized that rule, citing *Aurora. Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 155 Ill. App. 3d 231, 238, 507 N.E.2d 1193, 1198 (1987). Plaintiff’s claim here falls under that rubric.

Finally, plaintiff answers defendants’ contention that *Doe* supports their position that no other statute regulating behavior has any application if the conduct on which the civil claim is based is in any way related to the use of alcohol. Eta Nu br. at 28; Members br. at 19; *Doe v. Psi Upsilon*

International, 2011 IL App (1st) 110306, ¶4, 963 N.E.2d 327, 331. The plaintiff there alleged she became intoxicated at a fraternity house and consequently was later raped at a non-member's residence. She brought suit only under the Gender Violence Act. The court's primary point was that the defendant national organization was not liable because plaintiff had not shown a connection between the national and the one-time party at a house run only by the local organization. The national had no reason to know of the event. Consequently, *Doe's* further holding on which defendants rely is pure *dicta*.

Even the *dicta* is inapposite because the only allegation was that the plaintiff had been served alcohol and that the defendant was liable as a social host. There was no hazing at issue, and the defendant had nothing to do with the gender violence. The court had just ruled on that. Here, plaintiff's complaint alleges that the Mom and Dad's Night hazing event was part of defendants' broader business plan to generate fees and dues to support the fraternal organizations and that all the conduct at issue occurred in the fraternity house, further distinguishing it from *Doe*.

II. Plaintiffs alleged that the fraternity members voluntarily assumed a duty to care for the pledges when they monitored them with breathalyzers, placed the insensate pledges in rooms designated earlier for that purpose as part of the plan, and ordered others not to obtain medical care. The appellate court properly found that sufficiently stated a cause of action based on voluntary undertaking.

Plaintiff alleged that the defendant members and officers voluntarily assumed a duty to care for and safeguard David Bogenberger as part of their

plan for Mom and Dad's Night. Plaintiff's complaint accused those defendants of planning to place the unconscious pledges, including David, into designated rooms, with their heads and bodies oriented so they would not choke on their vomit. App. at A5 (§§7, 8). They planned to check the pledges periodically. App. at A5 (§8). Fraternity officers even kept a breathalyzer and used it to monitor the blood alcohol levels of the unconscious pledges. App. at A5 (§10).

Pledges were assisted to the basement for the end stage of the event and when they began to pass out, taken to the rooms designated earlier for that purpose. App. at A8 (§29). Members continued to check on the pledges during the evening. App. at A9 (§32).

Officers and members discussed whether to seek medical assistance for the pledges, but decided not to do that. Significantly, they directed other members not to call 911 or otherwise help the pledges. App. at A9 (§33). The latter allegation was identical to the allegation supporting a similar cause of action in *Wakulich*. *Wakulich v. Mraz*, 203 Ill. 2d 223, 227, 785 N.E.2d 843, 846 (2003). The president and a member continued their involvement as late as 11:00 p.m. when they sent a mass text to the other fraternity officers and members instructing them to delete any photo or video of a "passed out pledge." App. at A8 (§31). They essentially directed members to destroy evidence of their misconduct.

The court below found those facts supported a cause of action based on the defendant members voluntarily assumption of a duty to care for David Bogenberger. *Bogenberger, supra* at ¶38. Plaintiff also alleged that the involved individuals acted in concert so that no specific identification of each individual was necessary because they were liable as a group. App. at A50-51 (¶5); R. C3063-64. A person is liable for injuries to a third person caused by the tortious conduct of another when the person acts “in concert” or “pursuant to a common design” with the tortfeasor. *Norman v. Brandt*, 397 Ill. App. 3d 1074, 1080–81, 929 N.E.2d 14, 19 (2010). That is a recognized cause of action in Illinois. *Borcia v. Hatyina*, 2015 IL App (2d) 140559, ¶ 23, 31 N.E.3d 298, 305.

The conduct here parallels the conduct in Wakulich.

The complaint’s allegations track the similar facts in *Haben* and *Wakulich*, facts which the appellate court in *Haben* and this Court in *Wakulich* said stated a cause of action based on a voluntary undertaking to care for pledges. *Haben v. Anderson*, 232 Ill.App.3d 260, 597 N.E.2d 655, 660 (1992); *Wakulich v. Mraz*, 203 Ill.2d 223, 245-46, 785 N.E.2d 843, 856-57 (2003). In *Wakulich*, the plaintiff alleged only that defendants placed her in a room to observe her after observing her vomiting from alcohol consumption. They did not get medical care and prevented others present from calling 911. This Court noted that the voluntary duty question was distinct from the social host liability issue it had addressed earlier. It affirmed the appellate

court's finding that the complaint stated a cause of action for voluntary undertaking. *Id.* at 245-46, 785 N.E.2d at 857.

In *Haben*, the plaintiff similarly alleged that the defendant allowed the intoxicated and unconscious pledge to be placed on the floor and then checked on him during the night and heard gurgling. *Id.* at 268, 597 N.E.2d at 660. That court also found that sufficient to support the allegation of a voluntary undertaking of a duty, even under those sparse allegations.

Even though the trial court here barred plaintiff from obtaining discovery from the individual defendants and other pledges (because they were potential witnesses in the criminal case), plaintiff's allegations are more detailed and thus provide even more information to support a cause of action for voluntary undertaking.⁷ Consequently, the same result should occur here as in *Wakulich* and *Haben*.

In response to the voluntary undertaking allegation, the defendant chapter argues that the complaint did not show the members made the victim's condition worse and the members raise that argument in a veiled fashion. *Eta Nu br.* at 32; *Members-br.* at 26-27. The chapter did not make that argument in its motion to dismiss and it is waived. R. C2864 (v12) (motion); *Coleman v. Hinsdale Emergency Med. Corp.*, 108 Ill.App.3d 525, 531, 439 N.E.2d 20, 25 (1982) (reviewing court cannot reverse on basis of an alleged pleading defect which was correctable).

⁷ The focus of those investigations and proceedings is different from the objectives of civil discovery, and therefore necessarily of limited value at the pleading stage.

In any event and as noted above, the allegations showed the members took complete control of the insensate pledges. As part of that control, they directed that no one seek help or call 911. App. at A9 (¶33). That alone shows that defendants adversely affected the outcome, and *Wakulich* established that such conduct brings the actors within the scope of voluntary undertaking.

One court has even gone so far as to hold that failure to call 911 may be a wholly separate and independent tort. *Skolnik v. Allied Prop. & Cas. Ins. Co.*, 2015 IL App (1st) 142438, 45 N.E.3d 1161. There, the defendant drugged a young woman in a bar, took her home, gave her methadone, and had involuntary sex with her while she was unconscious. Rather than call 911, he let her “sleep it off”. She died and her estate sued. Finding that the exclusion for injuries caused by controlled substances did not apply in that insurance coverage case, the court held it was a question of fact whether the woman might have survived if the insured had called 911, and said the failure to do so constituted an independent act. *Id.* at ¶45.

There is no issue about the scope of agency.

The Eta Nu chapter includes an argument that its members were not acting within the scope of their authority at the end of the event when they assumed care for the pledges who the members’ conduct had brought to the point of intoxication. It claims the members’ management of the intoxicated and insensate pledges, presumably including the directions not to call for

medical help and to destroy evidence, was "simply the result of an ad hoc assembly of still-awake fraternity members". Eta Nu br. at 34.

That is a remarkable argument in light of the nature of the hazing event where the intoxication which resulted in David's death was the planned and intended consequence of the fraternity's pledge event and indeed its focus. Having earlier designated rooms for the now unconscious pledges as part of their plan for Mom and Dad's Night and made arrangements in advance to care for them, the members continued care of him at all points was one of the steps in that process. That process was established before the event began. Things like room assignments, moving the intoxicated pledges to the rooms and giving them decorated buckets to vomit into, were all part of the event. The chapter does not argue against agency with respect to the member's conduct during the earlier phases of the event and nothing shows that the unchallenged agency relationship changed once the pledges became unconscious.

The hazing event was one process, not a series of events where the chapter's members popped in and out of the scope of their authority over the evening. The chapter attempts to break the event into segments and argues that members' roles changed from segment to segment. Courts have always rejected such tactics. That is seen in medical negligence cases where a claim is brought late under the relation back doctrine. The defense claims the

particular care which is the subject of the amended complaint is distinct from the medical care already timely at issue, and thus too late.

Courts, taking the transactional view used where res judicata is being applied, have concluded that the medical care ordinarily constitutes a single event. *Zabel v. Cohn*, 283 Ill. App. 3d 1043, 1050–51, 670 N.E.2d 877, 882 (1996) (discussing transactional approach). For example, in *Figueroa*, the court approved relation back after finding that the birth transaction included events happening both before and after birth, even though those were all discrete events. *Figueroa v. Illinois Masonic Center*, 288 Ill.App.3d 921, 924, 681 N.E.2d 64, 66 (1997). The same is true here.

The Eta Nu chapter contends plaintiff cannot possibly meet the voluntary undertaking requirements set out in *Wakulich* because the 27 members could not all have taken “exclusive” charge of the plaintiff. Eta Nu br. at 30-31. The chapter says *Wakulich* mandates that a defendant cannot voluntarily undertake a duty unless that person takes “complete and exclusive charge” of the injured person. However and critically, that is not what this Court said in *Wakulich*.

The Court there set out the Restatement’s pronouncement on voluntary undertaking; the Restatement predicates liability on the simple act of undertaking to render services to another. That is all. Neither the Restatement nor this Court requires complete and “exclusive” control, contrary to the chapter’s representation. The defendant chapter’s error was

that it apparently read what the plaintiff *alleged* in *Wakulich* and mistakenly construed that as the court's *holding* on the law. *Wakulich v. Mraz*, 203 Ill.2d 223, 243, 785 N.E.2d 843, 855 (2003).

Both defendants' briefs mention that some of plaintiff's allegations were based on information and belief. Eta Nu br. at 33; Members br. at 26. Neither raised that in their points relied on as grounds for seeking review and neither present any argument here, so any implied argument is forfeited. *Sullivan v. Edward Hosp.*, 209 Ill. 2d 100, 124, 806 N.E.2d 645, 660–61 (2004) (not raised in points relied on). In the same vein, defendants did not make that argument in the circuit court after plaintiff included the "on information and belief" phrase in his fourth and fifth amended complaints. R. C2561, C2583.

In any event, the appellate court recognized that plaintiff was entitled to rely on information and belief because the circuit court had barred the discovery sought by plaintiff but for one deposition of Justin Buck, the chief operating officer of the national fraternity. *Bogenberger, supra* at ¶34. Several cases explain why courts deem allegations based on information and belief sufficient. Those courts noted that in some cases, relevant facts are not known to the plaintiff. *In re Estate of DiMatteo*, 2013 IL App (1st) 122948, ¶¶83-84, 995 N.E.2d 420, 438.

An allegation based on information and belief may not be the precise equivalent of an allegation of relevant fact, but courts acknowledge that at

the pleading stage, a plaintiff does not have the benefit of discovery to discern the facts hidden from him. *Id.* If he pleads what he can, that is deemed sufficient. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶40, 976 N.E.2d 318, 331-32 (relied on by defendants but approving sufficiency of allegations based on information and belief).

This Court has always recognized that a plaintiff need not plead facts with precision if the information needed to plead those facts is within the knowledge and control of the defendant, as was the situation here. *Holton v. Resurrection Hospital*, 88 Ill.App.3d 655, 658-59, 410 N.E.2d 969, 972-72 (1980). The rule assists a plaintiff who may be unable to discover the necessary information needed to draft a detailed complaint before bringing the action.⁸ Here, plaintiff several times sought permission to conduct discovery. R. C3265 (v14) (final motion with attorney's affidavit). Defendants opposed all discovery (see, e.g., R. C2094 (v9)) and the court denied discovery but for that one deposition. See, e.g., R. C3268 (v14) (order).

The court below noted specifically that plaintiff's counsel explained why he was forced to rely on information and belief and that he also showed the court what he had relied on in so pleading. *Bogenberger, supra* at ¶34, 56 N.E.3d. at 15. Plaintiff's motion identified the specific discovery needed, naming individuals and describing what counsel knew from police records. R. C3268 (v14). Among other things, he provided the court with the police

⁸ Moreover, a fair reading of the Fifth Amended Complaint shows it is sufficiently specific for any stage of the litigation.

summaries of interviews with fraternity officers Omar Salameh and Alex Jandick. R. C3936; App. at A51; R. C3941; App. at A55.

Salameh described the event much as plaintiff alleged. R. C3935 (v16). The pledges were given the perception they had to go through the pledging process "and complete the events", which would include this Greek Mom and Dad's Night, to become members. The pledges viewed this as a mandatory meeting. R. C3936-37 (v16); App. at A51. The fraternity led them to believe that if they did not participate, they would not become active members. If they did not drink, they would be harassed.

Salameh described it as a common event and said all the houses (presumably meaning the national fraternity) participate. He confirmed the amount of drinking and significantly confirmed this was not a "party atmosphere type event", contrary to the spin his own counsel now try to put on the event. R. C3937 (v16); App. at A52. That echoes plaintiff's point that this was a fraternity hazing event, not a social host situation. Relevant to the voluntary undertaking issue, he described how they checked the pledges after they passed out. Jandick, the fraternity president who carried a portable breathalyzer, confirmed this event was mandatory. R. C3941 (v16); App. at A55. He also confirmed that pledges were pressured to drink and were given the impression they had to drink.

The chapter's brief closes its scope agency argument, directed solely at members' care of the pledges after they were intoxicated, with a naked

conclusion that plaintiff did not plead vicarious liability. Eta Nu br. at 35. The appellate court disagreed, finding that the complaint alleged both direct and vicarious liability. *Bogenberger, supra* at ¶ 41, 56 N.E.3d at 17. In any event, the chapter did not include that defense in its motion to dismiss and it is waived. R. C2864 (v12); *Coleman v. Hinsdale Emergency Med. Corp.*, 108 Ill.App.3d 525, 531, 439 N.E.2d 20, 25 (1982) (reviewing court cannot reverse on basis of an alleged pleading defect which was correctable).

CONCLUSION

When the Court considers how to carry out the policies underlying what defendants argue are competing statutes but plaintiff views as complementary statutes, plaintiff offers the following guidance from a respected federal jurist explaining the urgency of curtailing hazing:

When one set of students sets to prey upon another set of students in a ritualistic exercise, the consequences of which will necessarily effect the students' relationships while they are all in attendance at the same school, the ability of school officials to act in the area and discipline those who went beyond the pale of tolerable student behavior is manifest. Today's juniors, who will be tomorrow's seniors, may well feel emboldened when it comes their turn next year. The school has a right, and a duty, to retard the growth of incivility among its students. *Gendelman v. Glenbrook N. High Sch.*, 03 C 3288, 2003 WL 21209880, at *2 (N.D. Ill. May 21, 2003).

The legislature surely had that in mind when it created the Hazing Act many years ago and then amended it just five years ago. Its intent is best

brought into bloom by acknowledging a common law action for hazing related injuries even where alcohol is a component of that hazing.

For those reasons, plaintiff Gary Bogenberger, special administrator of the estate of David Bogenberger, deceased, requests that the decision of the appellate court be affirmed.

Respectfully submitted,



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Attorney for Plaintiff-Appellee
Gary Bogenberger, administrator of
the estate of David Bogenberger,
deceased

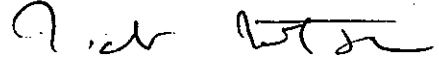
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CERTIFICATE OF COMPLIANCE

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 11,367 words.



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APPENDIX

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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, individ-
ually 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.

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.
VERGARALOE, 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. SALASANI 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:

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 initiated into the fraternity.
4. Upon information and belief, 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 Constitution, Risk Assessment Manual Chapter Codes and its quarterly publication *The Shield and Diamond* and *The Garnet 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 the local 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 situation created, intentionally, whether on or off fraternity premises, to produce mental or physical discomfort, embarrassment, harassment, or ridicule. Such activities may include, but are not limited to the following: Use of alcohol, ... 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 awareness education, alumni relations, finances, 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 INTERNATIONAL 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 INTERNATIONAL 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 decedent 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

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. VERGARALÓPE, 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. VERGARALOE, 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. VERGARALOE, MICHAEL D. PFEST, ANDRES JIMENEZ, ISAAH 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

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Moylan: "Thank you, Mr. Speaker. Ladies and Gentlemen of the House, House Bill 1443 is in response to a local hazing issue that took place in my district and strengthens penalties for school officials that fail to report the act of haze... of hazing. I ask for your 'yes' vote, and I'm open to questions."

Speaker Turner: "Representative Bost."

Bost: "Hi, mayor. So, here on this floor, we decided not to haze people on their first Bill."

Moylan: "Cor... correct."

Bost: "Did you have this Bill and move... moving with this Bill prior to us stopping that?"

Moylan: "Yes, Sir."

Bost: "So, it wasn't in response to try to move forward with not allowing the first Bill..."

Moylan: "Correct."

Bost: "...debate."

Moylan: "Correct."

Bost: "But this is your first Bill?"

Moylan: "Yes. Correct."

Bost: "And we have, you know, not ask a lot of questions and what... we've not moved down that path, but you are a very... very special to us..."

Moylan: "Correct."

Bost: "...on this side of the aisle. You... you are."

Moylan: "But you know..."

Bost: "And... and I think... and I need to know something, and... and we'll get back to your Bill in just a minute. You know, when I first came into the General Assembly, one of the

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and our concern for the safety of the children. So, I think this is needed, but I... I hope we, and it's a separate issue then the way you defined this, we do need to talk about making sure bullying is reported. I've... I've heard allegations of maybe some bullying not being reported in some places. I don't have enough details, but I'll try to follow up on that too. So, I... I think you're addressing a very important and serious issue here. And I think it deserves a 'yes' vote. Thank you."

Moylan: "Thank you."

Speaker Turner: "Representative Durkin."

Durkin: "Will the Sponsor yield?"

Speaker Turner: "Sponsor yields."

Durkin: "Representative, this is... does this apply to all schools including non-public schools in Illinois?"

Moylan: "Yes, Sir."

Durkin: "K-12 through college?"

Moylan: "Yes, Sir. Yes, Sir."

Durkin: "Okay. I guess I just have a few questions regarding whether or not schools may have some exposure. Now, we are placing... making this a crime that if they do not report hazing. Is there currently a rule or law in place which... which requires the schools to identify or instruct employees, teachers on what is hazing?"

Moylan: "There is a mandated reporting law but no criminal... there is a mandated reporting law but not a criminal part of it."

Durkin: "I can... I... the reason I raise that question is, I think, that there is a... there are crafty attorneys in the

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State of Illinois and I'm sure you know a few of them. There are going to be cases where there is going to be hazing and the school is... someone will be penalized, and then somebody will be looking at the bigger picture that there will be civil action that will come against the school. One, is the school immune under the Tort Immunity Act?"

Moylan: "Not that I'm aware of."

Durkin: "Ooh."

Moylan: "If they're... if there's immunity, Sir, there might."

Durkin: "If there's a loss... if... let me... maybe I should just be more specific with the question."

Moylan: "Okay."

Durkin: "If an employee's charged with failing to report and there is a crime, and there is a, perhaps, you know, the family member or the student brings suit against law... against the institution, would they be immune under the Tort Immunity Act for failing to properly supervise?"

Moylan: "I would just give you what is happening in our school district. I'm just going to not answer that part. I'm going to give what's happening in a school in our district. The school and the... some of the former teachers are being sued."

Durkin: "I... here... here's what I... what I believe is the... a scenario that we need to be mindful of is now the replacing, you know, this is a good law. I'm going to support your law, but we need to be careful about what the ulterior situations which may occur. I can see a situation where there is going to be violation. Someone's charged a

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student, they go to their parent, and why wasn't that employee properly instructed, and the fact is it does create a tort there is a vi... there is a civil action. I want to make sure that our schools are not going to be subject that there's some type of hold harmless under the Tort Immunity Act which I think they are. But playing lawyer again, there's a Section in the Tort Immunity Act that... it's under the 'willful and wanton' conduct which states that you cannot use the defense of the Tort Immunity Act if... if someone shows an utter indifference to or conscious disregard for the safety of others. So, when I raised my first question as whether or not there's a program in place in which schools are required to instruct and to identify hazing and also to require a direct action for them to... instructed them that they need to report. I do think that we... it's something we need to be considered because I... I've seen them. I've defended local governments in these types of actions, and I want to make sure that we're not going to have a situation where there is going to be exposure which is going to be unintended from what you're trying to do. I'm not sure... I guess it's more of a rhetorical question. I'm not looking for a response. But I think it's just something I'm going to think about more and I will raise that to you. But I... I... but I just want to make sure we're not going to set up a situation which is we now creating a duty upon these... these employees to report but for the failure to report, it's a school have exposure for not instructing them properly of what the law is."

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person that did the act would get a Class IV Felony or could get a Class IV felony, but your Bill only addresses (a)5 which is the not reporting aspect, and it specifically points that's a Class A misdemeanor. So, what you're, maybe, intending and what you're... what the Bill says that they don't act up or they don't... they don't match, so you might want to look at that going over to the Senate."

Moylan: "And I assure you we will. Thank you."

Sullivan: "You bet."

Speaker Turner: "Representative Monique Davis."

Davis, M.: "Thank you, Mr. Speaker. To the Bill. First of all, Representative Moylan, I'm glad you thought to bring this important piece of legislation to this Body. Some people may not be aware, but people, young children have died because of hazing. In one instance, they were forced to drink alcohol from room to room to room. In other instances, they may have been beaten. In another instance, they were put into a... into a pond of water when they could not swim. When we send our children to school, be it a university or a high school, we expect that they're going to be protected. Administrators should do what they are responsible for doing and that's make sure that children are protected when they're in college, when they're in high school or elementary school. Hazing should be illegal. It should be a criminal offense for you, as an adult, to know about it and to turn your back. For those of us who respect children and who want the safety of our children when we send them to school, you will certainly vote 'yes' on this

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up the definition of hazing to withstand some constitutional scrutiny in the past as well as enhance the penalty when hazing is committed. This arose out of an incident at Western Illinois, when a young man from my hometown in Oswego died in a hazing accident. His mother since then has been a proponent of changing this law, as have I and many others. Worked with Representative Hoffman, the States Attorney's Association, as well as others to try to draft languages. As I said earlier, that will withstand constitutional scrutiny. The young men that were involved in hazing incident were not found guilty of hazing because the judge in that county indicated that the statute was unclear. I'll be glad to try to answer any questions. I think it's fairly straight forward but I would appreciate your 'yes' vote."

Speaker Kubik: "The Gentleman has moved to pass House Bill 113.

Is there any discussion? The Chair recognizes the Gentleman from St. Clair, Representative Hoffman."

Hoffman: "Thank you, Speaker. Will the Sponsor yield?"

Speaker Kubik: "Sponsor indicates he'll yield."

Hoffman: "Representative, this would create, I believe...I believe this would Class IV felony in the event that there is aggravated hazing, is that correct?"

Speaker Kubik: "Representative Cross."

Cross: "Representative, it becomes a Class IV felony when the hazing results in great bodily harm or death. And if it doesn't, if either one of those scenarios don't happen then it is a Class A misdemeanor."

Speaker Kubik: "Representative Hoffman."

Hoffman: "It is my understanding, Representative, I was the chief Sponsor last year of this Bill and I believe this is the same Bill as last year, isn't that correct? However, there

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were some concerns regarding the language of last year's Bill. I think that concerns have been cleared up, is that right?"

Speaker Kubik: "Representative Cross."

Cross: "Thank you, Mr. Speaker. Representative, you and I...you originally Sponsored this and added me as a Co-Sponsor last year. After that, Representative, I ended up discussing with the Senate, Senator Hawkinson, some of the specifics of the Bill. And this is a result of working with him as well as you and the States Attorney's Association. So it may not be in the identical form as when you started out but it's...we think its been cleaned up now. And I do appreciate your help on it."

Speaker Kubik: "Representative Hoffman."

Hoffman: "Thank you, Representative. I believe that this is...is a good Bill whose time certainly has come. I certainly think that...that this Act of hazing because of what the courts have done and striking down the Act and subsequently having to make some very serious changes to the law which really enhance the penalty is very positive. I only wish that we could go a little further and repeal the fact that there still would be good time given with regard to this...to this piece of legislation. Still, I think it's a good piece of legislation and I urge everybody to vote in favor of it."

Speaker Kubik: "The Chair would remind the Body that ~~the~~ matter is on Short Debate. We have a sufficient number of individuals who requested that it be taken off the Order of Short Debate. Are there...is there any further discussion? The Chair recognizes the Gentleman from Rock Island, Representative Brunsvold."

Brunsvold: "Thank you, Mr. Speaker. Will the Gentleman yield?"

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Speaker Kubik: "The Gentleman indicates he'll yield."

Brunsvold: "Representative Cross, where have you drawn the line.

Now give me an example because, you know, we've gone through most of us on this floor that have been through hazing and the particular colleges we where in. Where have you drawn the line on this hazing operation and you and I both know it's going to go on to some degree, where is that line?"

Speaker Kubik: "Representative Cross."

Cross: "Representative, I'm not trying to be evasive. I'm not sure where the line is, it's going to be a matter for a judge or a jury to decide. The language is fairly clear that if...and I'll read it as quickly as I can. 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 for the purpose of induction or admission to any group or organization. If that act is not sanctioned or authorized by the institution and the act results in bodily harm. I think it's a pretty early line, I think you're reaching fairly soon. And I think back, I happen to be in a fraternity when I was in college, and I look back at some of the things we did and we probably crossed the line and were just fortunate we didn't have great bodily harm or death. So I try to answer your question, I think the line is drawn early. And it...we've got to do something to stop the deaths and they've been happening with some frequency around the State of Illinois."

Speaker Kubik: "Representative Brunsvold."

Brunsvold: "Well, everyone agrees with that Representative Cross.

No one wants to see any students injured because of some fraternity or sorority ritual and we don't want that to

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happen. Yet we know that, that there are initiation rights as part of this process. Are you saying to me then that...that if a college sanctions a fraternity or sorority for an activity then that is okay? And they can go through a procedure of mental stress on individuals?"

Speaker Kubik: "Representative Cross."

Cross: "The Bill...Representative, the Bill and you're asking a good question and I'm not trying to avoid it. The Bill does...avoid answering...the Bill does say that the act...the act, if the act is not sanctioned or authorized by that educational institution. So in answer to your question, I think it's yes. But I'll give you an example, at Western where this young man died, it was a rugby team and they gave this young man an incredibly large amount of alcohol and he died from alcohol poisoning. He had over a 4.0 and the university didn't sanction it and it was an event or an act that this rugby club did on their own and it was an act that the young man had to perform in order to get into the club. So under this Bill I think we would...it would apply."

Speaker Kubik: "Representative Brunsvold."

Brunsvold: "When I was at Augustana College we went through what was called hell week. That's very much like what we're doing now this week. We went through hell week. Is this going to eliminate hell week?"

Speaker Kubik: "Representative Cross."

Cross: "Representative, I don't know if it's going to eliminate hell week but I think it requires the fraternities and sororities to take a stronger look at what they're doing during hell week. I went through hell week at Illinois Wesleyan because I couldn't get into Augustana, so I had to go to Wesleyan. But I think we're all going...they're all

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going to have to take other...the Greek System as a whole is going to have to take a harder look at what their and the universities at what they're sanctioning and not sanctioning. I don't think it necessary precludes hell week but we're going to have to look at a little stronger what we're allowing to go on during hell week."

Speaker Kubik: "Representative Brunsvold."

Brunsvold: "Certain activities might be very harmless in their proceedings. Example, rolling down hills, smoking cigars under blankets and things like that. Those are pretty harmless activities. I suppose some place down the line someone may have a problem with something like that, that maybe totally unforeseen by anyone. Very harmless activity that might result in a bodily injury of some sort. Now is the judge going to be able to decipher this situation?"

Speaker Kubik: "Representative Cross."

Cross: "Well, Representative, there is a requirement of knowingly, or the language knowingly in this legislation and you're going to have to prove that as a prosecutor and I think the judge or the jury will have the opportunity to make a decision as whether or not hazing is committed or it takes place."

Speaker Kubik: "Representative Brunsvold, you have about 18 seconds now...Representative Mautino wishes to allot his five minutes to Representative Brunsvold. Representative Brunsvold."

Brunsvold: "Thank you, Mr. Speaker. Just...I'm just trying..."

Speaker Kubik: "Representative Brunsvold."

Brunsvold: "I'm just trying to define here, for the record Representative Cross, what can be done and what cannot be done because I feel that there ought to be some sort of a initiation period in a fraternity or sorority. And I agree

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with you it shouldn't be harmful, we don't want that to happen, we don't want it to happen to anybody. But there is a process that you go through that unites those individuals. Each pledge class, for example, has a unity thing they go through and I don't want to stop that because I think that's good. Can they still proceed to do those unity things as pledge class? Because I don't want to eliminate all of that."

Speaker Kubik: "Representative Cross."

Cross: "Joe I don't either and I think...I understand the point you're making and I, as I said earlier, I went through the same thing. All I...all this Bill attempts to do is to, not all, I think it is a significant Bill. It says, don't cross that line fraternities, draw in...let's bring in what you've been doing. Giving an 18 year old kid a bottle of vodka and a case of beer and putting he or she in a trunk and saying drink this and then you can come out crosses the line. Now we both know what we went through in hell week and think some of that is allowable and should be. But ultimately it going to be for a judge or jury to decide if the line's been crossed. But this forces, as I said earlier, some responsibility on the part of the fraternities and sororities and colleges and universities throughout the state."

Speaker Kubik: "Representative Brunsvold."

Brunsvold: "Would you envision the colleges and universities getting together with the fraternities and sororities and sitting down and putting together a policy to say what's acceptable and what's not acceptable?"

Speaker Kubik: "Representative Cross."

Cross: "It possible they've been doing that already, they probably should be doing it. I know that back when I was

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in school the national organization of our fraternity did just that and encouraged us to take another look at what we were doing during hell week and all during pledge...the pledge, you know, the semester pledgeship. I think the universities need to maybe take a stronger look and that's a good suggestion."

Speaker Kubik: "Representative Brunsvold."

Brunsvold: "Thank you, Representative Cross. To the Bill, Mr. Speaker."

Speaker Kubik: "Representative Brunsvold, proceed."

Brunsvold: "I agree with Representative Cross that the colleges and universities should sit down with their sororities and fraternities and other groups and set down policy to what is acceptable and what's not acceptable. And take the responsibility, not go to the situation where anyone gets hurt because we don't want that to happen. Yet we want some flexibility here so...so people, young people, can through initiation rites which binds them to that fraternity or sorority and that's what it's all about. That's part of the fun of being in college. And we should let them do that to a point but no one on this floor, I know, wants anyone to be hurt. So I'm going to support your Bill, Representative Cross, with that explanation of what we think they ought to do."

Speaker Kubik: "Further discussion? Before we proceed to further discussion I would like to remind the Membership that when a Member is five minutes are up that a Member cannot receive a yield of time from another Member unless that Member is recognized. So, with that I would like to proceed to Representative Novak. Representative Novak."

Novak: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. Hi, Tom. Tom, I recall that case in Western

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Illinois University and as you said at the beginning of your presentation of your Bill that the judge found that the current statute is vague, was that it?"

Speaker Kubik: "Representative Cross."

Cross: "Representative, I don't remember if vague was the exact word the judge used. He didn't think the current statute, that's on the books now that was drafted in the early 1900's, under the facts of the case at Western he could not find him guilty and as a result he...there was no finding of guilty on any of the hazing offenses. And there are about 12...12 young men that were charged with hazing and an alcohol related offense. After the first two were found not guilty, my understanding in talking with the States Attorney, is he didn't pursue on the...he didn't pursue the others. And they pled to some, the alcohol related offense but the judge said under the current law I can't find them guilty."

Speaker Kubik: "Representative Novak."

Novak: "Yes, thank you, Representative. Is the current law, granted I'm not an attorney here but I'm just curious on some aspects of this Bill and I support it, I think your idea is laudable. Is the current law or the proposed law refer to anything about conspiracy?"

Speaker Kubik: "Representative Cross."

Cross: "Phil, I don't think the word conspiracy is in the current law. I'm looking now at a definition of it and I don't remember, in looking at it or what I'm looking at now, that wording in it or that phraseology."

Speaker Kubik: "Representative Novak."

Novak: "Well, thank you Representative. The reason why that word came to my mind is because normally when these hazing situations are brought forward, usually they're conducted

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the death or the great bodily harm."

Speaker Kubik: "Representative Novak."

Novak: "Thank you, Representative Cross, I appreciate that. One other question I had for you. Have we been successful in any other areas of the state in prosecuting any of these hazing situations? Because I know, I think, a hazing situation occurred at my alma mater, at Eastern Illinois University, where one student was thrown into some hazardous toxic substance pit down there and I think the school is under...is being subjected to a lawsuit, I believe. But I don't know if the States Attorney has brought any action against some of the fraternity members. But can you recall anywhere around the state where we've been successful in prosecuting hazing incidents?"

Speaker Kubik: "Representative Cross."

Cross: "Representative, that young man's woman was in committee the day we had testimony on this Bill and I saw some photographs of that young man. I don't believe and I don't want...don't hold me to this I don't want to swear to it but I don't think the...she contacted the States Attorney's office, I don't think they wish to prosecute. I believe that's what she told me, she didn't testify. I'm not aware of any other cases. But it seemed like there was...it was either...I believe I recall her saying that the States Attorney didn't want to pursue this, but I'm not 100% sure about that, Phil."

Speaker Kubik: "Representative Novak."

Novak: "Yes, Mr. Speaker, thank you very much. The Chair recognizes the Gentleman from Cook, Representative Lang."

Lang: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Kubik: "Sponsor indicates he'll yield."

Lang: "Thank you. Representative, the fiscal note indicates,

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up to the Department of Corrections and I really don't know the exact answer."

Speaker Kubik: "Representative Cross, would you let Representative Cross finish his answer. Representative Cross."

Cross: "I've concluded, Mr. Speaker."

Speaker Kubik: "Representative Deering. Representative Deering wishes to allot his five minutes to Representative Lang. Representative Lang, proceed."

Lang: "Thank you. I want to continue on this discussion of truth and sentencing. There was an effort to put a Truth and Sentencing Amendment on this Bill that would probably clear this problem up, Representative. But apparently you...you did not want that on your Bill because you sent that Amendment off to some oblivion. But the question is, on a Class IV felony probation is possible, isn't that correct?"

Speaker Kubik: "Representative Cross."

Cross: "Representative, I...I think you're aware that probation is an available sentence on a Class IV. You know, we're talking about a young man that died in my community from a hazing accident. And I understand the politics of this place and I can appreciate what you're attempting to do. But there have been several incidences in this state where young men and women have died in hazing accidents. This is an attempt and think it's a good attempt, worked out by a lot of people, to address a serious problem. And I think this is a good solution to a serious constitutional problem that all of us have faced. Now I don't...this doesn't affect, nor do any criminal laws in this state when we start trying to clean them up, affect the sentence. That's a different part of the criminal statute. And if you want to talk about that another time, I'd be glad to. This is a

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TRANSCRIPTION DEBATE

35th Legislative Day

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this Motion, there 64 voting 'yes', 49 voting 'no', none voting 'present'. And the Motion is adopted. Representative Cross to close."

Cross: "Thank you, Mr. Speaker. Very briefly, the language in the current statute or the current hazing statute, without a doubt, has some constitutional problems. For us to adequately address the current climate in colleges we have to rewrite the hazing statute. I think this is a good attempt at it, a lot of people have been involved on both sides of the aisle as well as over in the Senate. I think this is a good attempt in addressing a serious problem. I think it's needed and I appreciate the questions I've heard today. I think we addressed them adequately and I would appreciate a 'yes' vote. And thank you for your time, Mr. Speaker."

Speaker Kubik: "The question is, 'Shall House Bill 113 pass?' All those in favor of the Bill shall vote 'aye'; all those opposed shall vote 'nay'. The voting is open. This is final action. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. On this question, there are 114 voting 'aye', none voting 'no', none voting 'present'. And this Bill, having received a Constitutional Majority, is hereby declared passed. For what reason does the Gentleman from Cook, Representative Lang, arise?"

Lang: "Thank you...thank you very much, Mr. Speaker. I noticed on the last Motion to move the previous question that you tried originally to do it on a voice vote and then decided that it should be a roll call. I would like the record to reflect that we will demand a Roll Call Vote in case we forget to do it in a certain circumstance on every procedural Motion this week. Thank you very much."

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On November 6, 2012, at approximately 10:45am, I spoke with Omar A. Salameh in the lobby interview room, at the Police Department. I informed Salameh that I wanted to speak with him reference this incident. I informed Salameh that he is not under arrest and free to leave at anytime. I read him Miranda from a pre-printed Miranda Form, and asked him if he understood his rights. Salameh stated he understood his rights, and he wanted an attorney present before questioning. I ended my interview with Salameh.

I returned to the interview room and informed Salameh that his is free to leave, and that I would transport him back to his residence. Salameh asked what was going to happen at this point. I informed Salameh that at this time we are speaking with everyone that was at the Fraternity during this incident, to determine what had happened, and so far everyone has been cooperative. I informed Salameh that if charges are pursued, we do not have a statement from him to consider. Salameh stated that he was just scared, and he wants to speak with me about the incident without an attorney.

At approximately 10:49am, I presented Salameh with a Miranda Waiver Change Form, and read this form out loud to him why he read along. Salameh stated he wants to speak with me about this incident. Salameh signed and dated this form, acknowledging he now wanted to speak with me.

Salameh stated in summary, but not verbatim, the following; he is an active member of the Pi Kappa Alpha Fraternity, also known as the Pikes. Salameh stated he is on the Pledge Board, of the Fraternity and holds the position of New Member Educator. Salameh advised a duty of his position is to provide new pledges with notices of meetings and events.

I asked Salameh about the new pledges and the pledging process. Salameh advised once a pledge fills out the form that is sent into the National Chapter, they are members of the Fraternity. Salameh stated the active members of the Fraternity know this, but the pledges do not know. Salameh advised this information is kept from the pledges, because the active members do not want the pledges to walk in the door and say they are active members. Salameh advised the active members want to get to know the pledges first, and know what kind of person they are before they accept them as active members. Salameh advised sometimes pledges drop out of the process, but this year the pledges are a "solid" group. Salameh advised the pledges are given the perception that they have to go through the pledging process and complete the events to become active members.

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1. Taken to Other Location 2. Pending 3. Adult Arrest 4. Juvenile Arrest		5. Charged by Youth & Crime 6. Charge/Arrest Extension 7. Charge/Arrest to Juvenile 8. Charge/Arrest to Adult 9. Charge/Arrest to Adult		
10. Charge/Arrest 11. Unfounded		12. Charge/Arrest		

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Salameh advised the event held on Thursday night, was "Greek Mom and Dad night." Salameh stated Steve Libert ran this event. Salameh stated Libert told him that he would be in a room with a Greek Mom. Salameh stated Libert chose the rooms to be used, and assigned active members to each room. Salameh stated Libert told him what room he was in. Salameh stated Libert told him the pledges will be going room to room asking the members if they are their Greek Dad and Mom. Salameh stated the pledges were not told about the details of the event, but only the time, location, and attire. Salameh stated the pledges were told at a Pledge Meeting the week before, to be there for this event. Salameh advised he believed all the pledges showed up for the event, and believes there are twenty pledges in all. Salameh advised their Fraternity had this event last year as well, and it was also organized by Libert. Salameh stated this is a common event within their Fraternity Chapter, and all their houses participate. Salameh advised this event was brought back last year after not being held for three years prior. Salameh stated the former President had a problem with this event, which is why it was not held for three years.

I asked Salameh how the Greek Sons were chosen. Salameh stated the active members chose their Greek Sons days before the event, and the process was similar to the NBA draft lottery. Salameh advised he got first pick, and chose his Greek Son. Salameh advised most of the pledges did not know who their Greek Dads were, but his Greek Son knew, because they were already close friends. All of the active members participating knew who their Greek Sons were before the event. Salameh stated being a Greek Dad is like being an advisor for the pledge, and to assist them with issues or help with tests.

I asked Salameh about the night of the event. Salameh stated he was in his room, which is room 17. Salameh stated Pat Merrill, Isaiah Lott, and Andrew B. were the other active members assigned to this room. Salameh advised he bought alcohol for himself, but did not purchase any alcohol for this event. Salameh stated Lott brought his own bottle of alcohol. Salameh advised the pledges came into their room in groups. Salameh advised they had the pledges sit down in the room, and they asked the pledges questions. Salameh advised they asked the pledges questions like, "who do they like the most?" and "who do they like the least?" Salameh advised they did not ask the pledges yes or no style questions, and did not make them consume the shots if they answered the question wrong. Salameh advised they had shot glasses in the room, and poured the pledges shot glasses of Vodka mixed with pop. Salameh advised he knew other rooms were pouring shots and giving them to the pledges. Salameh advised they mixed the shots, because they knew the pledges were coming in their room later on in the event, and did not want to give them too much. Salameh stated

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1. Reported Incident 2. Pending 3. Adm. Action 4. Under Review	5. Closed/Referred to Other Agency 6. Closed/Referred to Other Department 7. Closed/Referred to Other Division 8. Closed/Referred to Other Unit	9. Closed/Referred to Other Division 10. Closed/Referred to Other Unit 11. Unresolved	12. Other

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after a while they were pouring mostly pop in the shot glasses and adding only a splash of alcohol. Salameh advised they had shots poured and ready before the pledges entered the room. Salameh advised the pledges were told at the beginning of the event that they were going to have a good time, and to participate until they couldn't anymore. Salameh advised there were no set rules to this event, and what occurs in each room. Salameh stated the pledges could stop consuming alcoholic beverages if they wanted to.

I asked Salameh if he observed any pledges getting sick during the event. Salameh advised he observed at least 5-8 pledges getting sick. Salameh advised he does not remember all of the pledges he observed getting sick, but remembers Corey J. and Brian C getting sick. Salameh advised this event wasn't a party atmosphere type event, and was over within a few hours. Salameh advised he remained sober until approximately 2am, and periodically checked on the pledges in the house. Salameh advised some of the pledges were sleeping in the kitchen. Salameh advised he checked on Dave Bogenberger twice. Salameh advised he never had a conversation with anyone throughout the night about getting any of the pledges help.

I asked Salameh about Bogenberger. Salameh advised Bogenberger came into his room with Sean Pfeiffer and Jon Davila. Salameh did not remember what time they came into his room. Salameh stated Bogenberger, Pfeiffer, and Davila were all intoxicated. Salameh advised they were not the most intoxicated pledges that he observed come into his room. Salameh advised Dan Jeske was the most intoxicated pledge, who entered his room. Salameh advised they had Jeske lay down in his room for 15 minutes. Salameh advised he observed Bogenberger later on after the event was over. Salameh advised he and Frank Rizzo observed Bogenberger at approximately 10:30pm, in the hall. Salameh stated Bogenberger was drunk and laughing at this time. Salameh stated he observed another pledge pick Bogenberger up and take him to bed.

I spoke with Salameh about the pledge process for this event. Salameh admitted the pledges believed this was a mandatory meeting. Salameh stated all of the pledges knew they had to be at the Fraternity at 8pm. Salameh advised the event is set up so the pledges have to go to each room and ask the members if they were their Greek Dad. The active members would reply, "No take a shot" if they were not the pledge's Greek Dad. I asked Salameh if it was accurate that this event is a drinking event, in which the pledges are supposed to consume alcoholic beverages. Salameh advised this is correct. I asked Salameh if the pledges are made to believe they had to participate in this event. Salameh advised that the pledges are made to believe that if

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1. Solved by Officer's Action 2. Pending 3. Adult Arrest 4. Juvenile Juvenile		5. Solved by District Officer 6. Closed/Outstanding 7. Closed/Refused to Cooperate 8. Opened/Outstanding 9. Solved 10. Closed/Arrested 11. Unfounded		

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they didn't participate in the event, they would not become active members of the Fraternity. Salameh advised some pledges had excuses not to consume alcohol, because of medical conditions. Salameh advised those pledges with medical conditions did not consume alcohol and were informed that they did not have to consume alcohol during the event. Salameh advised if a pledge, who did not have an excuse, chose not to consume the alcoholic beverages he could do so, but they would probably tell him "what the hell is wrong with you!"

Salameh stated he was one of the individuals who found Bogenberger in the morning deceased. Salameh advised Libert came to his room around 9:30am, and woke him up for their bowling class. Salameh advised Libert advised he had to get socks and asked Salameh to go to his room with him. Salameh advised when they walked into Libert's room, Libert told him Bogenberger had a test today, and that they should wake him up. Salameh advised he observed Bogenberger lying on a bed in Libert's room. Salameh stated he shouted, "Dave wake up, you missed your test!" Salameh advised Bogenberger did not respond, so he went to touch him. Salameh stated he touched Bogenberger and felt he was very stiff, and his finger tips were black. Salameh advised he observed Bogenberger's arm was stiff and froze in a specific position. Salameh advised he thought Bogenberger was dead. Salameh stated he called for Isaiah Lott, who entered the room and helped him roll Bogenberger over. Salameh advised he and Lott rolled Bogenberger over, and when he saw Bogenberger's face, he knew he was dead. Salameh advised he then woke up everyone in the house while someone contacted the police.

Salameh voluntarily completed a written statement. Salameh's written statement was submitted with this report.

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CAUSE OF DEATH 1. Natural Cause 2. Pending 3. Adult Arrest 4. Juvenile Arrest	CAUSE OF DEATH 5. Observed by Unit of Police 6. Observed by Other Person 7. Observed by Other Person 8. Suspect/Offender/Relative	9. Probable 10. Clear/Unprobable 11. Unprobable	<u>2</u>	

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On 11-06-12 Detective Woodruff and I met with Alex Jandick at his residence, the Pi Kappa Alpha fraternity. I had previously interviewed Alex on 11-02-12. I asked Alex if he would come to the police department to speak with me further about this case. Alex agreed to come with us voluntarily. I advised him that he was not under arrest and he was not handcuffed. We drove him to the police department. I spoke with Alex in the detective's interview room. I advised Alex of his Miranda Rights at 9:15 a.m. He waived his rights and agreed to speak with me. He completed a written waiver which is attached to this report. Alex advised that he would be completely honest with me about the details of this case.

Alex advised me the following in summary: In the past, the fraternity had hosted a Greek mom and dad night which was a tradition. The fraternity stopped hosting the event around the N.I.U. shooting in 2008. The fraternity has been having problems retaining pledges so it was decided last school year that they would start up the event again. Steve Libert helped to organize the event last year which was held in the basement of the fraternity house. Alcohol was provided to the pledges but they had the option to consume it or they could say no.

This year Steve Libert was again in charge of the event and Alex authorized the event to be held. Libert set the date of the event and decided that the pledges would go room to room every ten minutes in a progressive mixer. There were two or three sets of Greek parents in each room. The pledges were asked different question in each room. The questions were about the fraternity as well as some that were nonsense. The active members who had a Greek pledge son were expected to buy and provide alcohol for the pledges. If the active member was under age, they would get someone else to buy the alcohol for them.

He said that he arrived home around 7:45 p.m. and the pledges were in the dining room. He said the event was mandatory for the pledges to attend. He later learned that the pledges were told by Steve Libert what rooms to go to and that they could drink if they wanted. He said that Steve Libert gave each of the pledges a cup which they were supposed to use for the night. He described that the cups were between four and six ounce sized cups. He said that most of the alcohol that was served was vodka. He explained that the pledges had the option to drink and were told to do so if they answered a question wrong. He said that he was in room nine for a period of time. While in the room he saw Dave pour himself half a glass of vodka. He told Dave to mix it with coke. He said Dave also lost his cup at one point and Alex offered him another but Dave did not listen.

I asked Alex what rooms he went in during the night. He said that he was moving around through out the hall and did not really stay in any of the rooms. I asked what active members were in room nine. He said that Jon Wallace and Nick Sutter were in the room and that Nick was pouring the drinks for the pledges. Alex said that at one point he helped put Estefan's pledge to bed because he was throwing up. He said he had vomit in his hair which he helped clean up. He also helped pull up his pants. He contemplated taking this subject to the hospital because he was so intoxicated. He said that there were more than five pledges who were

REPORTING OFFICER SIGNATURE/DATE <i>Det. Mike Stewart</i>	OFFICER PRINTED NAME <i>Stewart</i>	DATE <i>11-12-12</i>	REPORT MADE BY <i>Det. Mike Stewart</i>	DATE <i>11/13/12</i>
CASE STATUS: 1 Referred to Other Jurisdiction 2 Pending 3 Adult Arrest 4 Juvenile Arrest		5 Cleared by Death of Offender 6 Cleared/Denied Extradition 7 Cleared/Referred to Competent 8 Cleared/Prosecution Declined		9 Inactive 10 Cleared/Juvenile 11 Unfounded

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throwing up. He said that the pledges had been trying to impress the active members by drinking so much. He was asked if there were any drinking games. He did not see any of these games being played but assumed this did go on. He saw two pledges passed out in the dining room, one passed out in the foyer, and a second in the foyer that had vomited and passed out. He said that he and Nsenzi helped carry one pledge upstairs to the dining room where they put him to bed. He made the comment, "It was a shit show".

Alex said that he had consumed six or seven beers himself. He said that he has a portable breathalyzer which showed his breath alcohol content to be .13. He slowed down drinking and conducted "damage control" starting at about 11:00 p.m. He said he helped make sure that the pledges were all sleeping on their sides. He then went back to his room and drank with friends. He said that when he was in his room he mixed the drinks so they were weak so that nobody would get too drunk.

I asked him how the pledges acted that night. He said that they were excited and were trying to impress their parents. I asked if he thought that they felt pressured to drink. He said that if he was in their shoes he would have felt pressured. I asked him what would happen if the pledges did not drink. He said that they would have been called "Pussy" if they did not drink but they would not be forced. He said that the pledges probably got the impression that they had to drink that night. He reiterated that some poured their own drinks at times, but at other times an active member would pour the drink for them. He said many of the pledges drank a lot of alcohol in a very short amount of time.

I asked when the pledges had been notified that they had to attend the event. He said that they would have been told at the pledge meeting the previous Tuesday, "Most likely". I asked when he found out that Dave had died. He said that on Friday morning, he noticed that he had three missed calls on his phone from Omar. He noticed this at 9:45 a.m. He then got another call and was told that a pledge had died. He said that when he got upstairs the paramedics were already there. He said that he learned that Steve Libert had found Dave deceased.

I asked him how many groups of pledges he saw rotate through room nine and he said three or four groups. He said that each pledge had on average between zero and three shots of alcohol from the cups that Libert had given them. I asked him which active members were assigned to each room. He said he asked Steve Libert for a list but Steve did not have this ready for him yet. He said that there was no real system as to who was to be in a room, it was whoever wanted to open up their room which they had volunteered to do when Libert asked for volunteers. Alex did say that he and others active members were in the hallway directing pledges to go to various rooms.

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CASE STATUS <u>D.I. M. L. Stewart</u>	1 Referred to Other Jurisdiction 2 Pending 3 Adult Arrest 4 Juvenile Arrest 5 Cleared by Death or Verdict 6 Cleared/Quoted Evidence 7 Cleared/Refused to Cooperate 8 Cleared/Prosecution Declined	9 Inactive 10 Cleared/Juvenile 11 Unfounded	<u>2</u>	<u>1</u>

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I asked about the executive members in the fraternity. He said the following people were executives:

- President: Alex Jandick
- Internal Vice President: John Hutcherson
- External Vice President: J.P. Harvey
- Treasurer: John Hutcherson
- Secretary: Pat Merrill
- Man-at-large: Tom Costello
- Sgt. at arms: Ray Rosemier
- Pledge Trainer: Omar Saleme

Alex agreed to complete a video statement. The original DVD was later placed into evidence. See property sheet. He subsequently agreed to contact various active members and arranged for them to come in to speak with officers. He remained highly cooperative during the entire time I dealt with him. I then drove him home.

REPORTING OFFICER'S SIGNATURE <i>[Signature]</i>	OFFICER PRINTED NAME Stewart	DATE 11-12-12	REPORTING AGENCY <i>[Signature]</i>	DATE 11/13/12
CASE STATUS: 1. Pending 2. Adm. Action 3. Pending 4. Closed		5. Closed 6. Closed 7. Closed 8. Closed	9. Closed 10. Closed 11. Closed	

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