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Court ruling could raise risk for drinking fraternities

By David Glovin/Bloomberg News

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(Photo by De Agostini Picture Library/De Agostini/Getty Images)

A national fraternity with chapters on more than 125 campuses must stand trial over the drinking death of a Wabash College freshman, an Indiana court said in a ruling that may force the organizations to take more responsibility for misconduct at chapter houses.

The Indiana Court of Appeals on May 8 reinstated a lawsuit against Delta Tau Delta by the family of Johnny Dupree Smith. Smith, 18, was found dead on Oct. 5, 2008, his blood alcohol level five times the .08 percent limit for legal intoxication in Indiana. He had passed out during “Pledge Family Drink Night,” according to the complaint in the wrongful-death case.

The ruling is the first by an appellate court in Indiana, where many fraternities are based, that a national fraternity must face a trial for injury or death at a chapter house, Stephen Wagner, a lawyer for Smith’s parents, said.

Unless reversed on appeal, the decision may compel national fraternities “to redouble their efforts to protect all their members” from injury, said Robert Heidt, who teaches negligence law at Indiana University’s Maurer School of Law in Bloomington. “If every court in the country did this, I bet it would change the structure of fraternities.”

The ruling comes as Greek life rebounds, with membership up 29 percent since 2005. Death and injury from fraternity-related hazing, drinking and partying also are climbing. Since 2005, at least 54 students nationwide have died and six were paralyzed in incidents connected with such activities, according to a Bloomberg analysis of lawsuits, news accounts and interviews.

Beset by lawsuits claiming negligent supervision, national fraternities have argued in court that they're not responsible for misconduct at their local affiliates because they don't actively supervise them. One fraternity lawyer recently told national groups that most state courts won't hold them liable if they're "predominantly passive" in their supervision of affiliates' "daily activities."

Last week's ruling, if upheld, may make it harder for national fraternities to take that middle-of-the-road approach, said Donald Gjerdingen, who also teaches torts at Maurer. Instead, national fraternities will have to decide whether to supervise fully or not at all, he said.

"You can imagine the scenario where the fraternity says we're going to take these things on," said Gjerdingen. "Or they'll say, 'It's not worth it — we leave it up to the local'" chapters to supervise its members.

The lawsuit also names Wabash College, an all-male institution of 900 students 48 miles northwest of Indianapolis, and the local fraternity chapter. It claims Delta Tau Delta, which is based in Fishers, Ind., and Crawfordsville, Ind.- based Wabash encouraged hazing and excessive drinking.

According to the complaint, Smith, who was from Tucson, Ariz., attended a chapter party where new initiates were told there would be "an abundance of alcohol." After drinking beer and vodka, he was unable to walk, could barely talk and fell down a stairwell, according to the complaint.

Left on a mattress in an upstairs bedroom, Smith was placed on his side "so he wouldn't choke on his vomit," according to court papers. He was found dead the next morning.

The appeals court detailed how Delta Tau Delta set rules, monitored and punished its local chapter for hazing, drinking and other wrongdoing. The court said jurors at a trial must determine whether the fraternity had assumed a "duty to protect" Smith, and then breached the duty.

"Through its chapter consultants and chapter advisers, Delta Tau Delta remained apprised of the daily activities of their local chapters," a three-judge panel said. "Not only were chapter advisers required to report conduct violations, they also were responsible to ensure the local chapter complied with any enforcement and corrective mechanisms."

The appellate court didn't rule on the merits of the case in reinstating claims, dismissed by a lower court last year, against Delta Tau Delta.

Kevin Schiferl, Delta Tau Delta's lawyer, said in an interview that he hasn't decided whether to appeal the decision to the state Supreme Court. The national fraternity "had no involvement in this incident," he said.

Since 2005, three student deaths have been associated with local affiliates of Delta Tau Delta, which was founded 150 years ago. The fraternity and a related charitable foundation had revenue of \$5.5 million in 2011. A fraternity spokesman didn't immediately return a call for comment on the ruling.

Jim Amidon, a spokesman for Wabash, declined to comment. The ruling is controlling only in Indiana. Plaintiffs injured in other states where laws may be more favorable to Greek house may try to sue in Indiana if a fraternity is based there, Heidt said.

Heidt, who was critical of the ruling, said it may drive national fraternities to abandon oversight of their chapters.

"In a way, the message sent by this is that national organizations should make no effort at enforcing their guidelines," he said.

Separately the Indiana Supreme Court is reviewing a case in which a national fraternity was found not responsible alleged hazing at another local chapter at Wabash. Gjerdingen said he expected the state Supreme Court to review the Smith case if Delta Tau Delta asks it to do so.

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