

COUNSEL WORKS TO HOLD FRATERNITIES ACCOUNTABLE FOLLOWING HAZING DEATH.

Meredith v. Kappa Sigma Mem'l Found., Fla., Miami-Dade County Cir. Ct., No. 2002-11335-CA-01.

When 18-year-old Chad Meredith pledged the Kappa Sigma fraternity at the University of Miami, he could not have foreseen that doing so would soon lead to his death.

One night during rush week in the fall of 2001, Chad went to a concert, where he encountered the fraternity's president, Travis Montgomery. They went to a party, both drinking throughout the evening. They left and went to the Kappa Sigma house, where, at about 4:30 a.m., Montgomery announced, "Tonight we swim the lake."

Chad knew that Montgomery had swum across the on-campus Lake Osceola as a Kappa Sigma pledge, although swimming in the lake was prohibited. The two young men were joined by David May, a former vice president of the fraternity, and another fraternity member, Timothy Williamson. When they arrived at the lake, Williamson refused to swim. He later testified that he told Chad, "You don't have to do this," but the other three entered the cold lake just before 5:00 a.m.

Before he got halfway across, Chad began screaming for help. May took a couple of strokes toward him, but then decided not to risk his own life. Montgomery, who had finished the swim, ran around the lake to the starting point, thinking Chad would turn back. He was correct: Chad's body was later found just 34 feet from shore, where the water was less than seven feet deep. Tests revealed that his blood alcohol level was .13 percent, almost twice the legal limit.

Chad's parents consulted ATLA members David Bianchi and Stephen Cain of Miami, who filed suit against Montgomery and May. An appellate court ruled that counsel could not name the fraternity as a defendant, because as an unincorporated entity, it had no legal identity under Florida law. The suit alleged negligence, breach of fiduciary duty, and breach of the duty to aid or rescue.

The depth of the Merediths' suffering is sadly apparent. Chad's mother is unable to work, and she cannot sleep well because she has visions of her son at the bottom of the lake. Her testimony at trial concerning a recurring dream in which Chad blames Montgomery for his death was one of the most persuasive pieces of evidence, Bianchi said. Chad's father testified that often when he drives his truck at night, he sees his son standing in the road and has to pull the

truck over until he can regain his composure. Another witness, who manages the cemetery where Chad is buried, testified that in 20 years on the job, she has never seen a family grieve as intensely as this one. Bianchi and Cain played a video of Chad's parents visiting their child's grave—which they still do nearly every day—to convey their anguish to the jury.

Police who investigated concluded that Chad's death was an accident and not related to fraternity hazing. Although the court did not permit the jury to hear this finding, Bianchi and Cain had to overcome the defendants' argument—bolstered by the testimony of Montgomery, May, and Williamson—that the swim was not hazing.

Montgomery was quoted in the university's student newspaper as saying that fraternity members wanted Chad to join and would never have hurt him intentionally. "You don't make Chad do stuff," he said. "It was just a stupid thing that four guys did." The attorney for Montgomery and May argued strenuously that no one made Chad swim the lake, that the swim was not a fraternity event, and that it was not a hazing ritual because "presidents of fraternities don't haze themselves."

In persuading the jury that Montgomery and May should be held responsible, it was important to prove that they did not make reasonable efforts to help him when it was apparent that he was in danger. Bianchi elicited startling testimony from May: "Even though he knew that he had only 20 or 30 seconds before [Chad] would go under and drown," Bianchi said, "he swam away."

The lawyer displayed a timeline showing that once Montgomery and May realized Chad was still in the lake, they did not call the police for 20 minutes or so—although they claimed to have called immediately. "What do you think they were up to?" Bianchi asked the jury. "I just let the question sit," Bianchi notes.

The jury determined that Montgomery and May were acting as members and on behalf of the fraternity when they induced Chad to swim across the lake. It also found that they exposed him to harm and then failed to aid or rescue him. The jury awarded \$7 million to each parent, finding Montgomery and May each 45 percent liable, and Chad 10 percent at fault. Accordingly, the verdict was reduced to \$12.6 million.

The defendants' motions for remittitur, judgment n.o.v., and a new trial were denied; they plan to appeal.

The fraternity's insurer, Zurich Insurance, had denied coverage and refused to defend Montgomery and May, arguing that Chad's death was not related to fraternity activities.

The jury's findings are *res judicata* as to Zurich on that issue, Bianchi argues, and he is seeking recovery from the insurer. The attorneys are also attempting to recover the judgment from the companies providing homeowners insurance to the defendants' parents. Plaintiffs claim the insurers acted in bad faith by refusing to settle for the policy limits.

Bianchi contacted Florida state representative Adam Hanner, who was drafting changes to the state's anti-hazing statute, Fla. Stat. § 1006.63, and the two worked together to revise the law. The bill they drafted provides that directing or pressuring a pledge to engage in conduct that results in serious bodily injury or death is a felony, punishable by a prison term of up to five years and a fine of up to \$5,000. A milder form of hazing, defined as intentionally or recklessly engaging in conduct that creates a substantial risk of physical injury during an initiation rite, is a misde-

meanor that is punishable by imprisonment of up to one year and a fine of up to \$1,000.

The bill specifically excludes the defenses raised in the *Meredith* case—including that the victim consented and that the conduct was not part of an official organizational event or done as a condition of fraternity membership. The bill, captioned the "Chad L. Meredith law," has gone through committee hearings and at press time was before the full house and senate.

Although a spokesperson reportedly stated that the university had not cracked down on hazing since Chad's drowning, Bianchi believes that the verdict and the legislation, if enacted, will deter future hazing. "If fraternity members know they could go to jail for this sort of conduct, that should really get them to think twice."

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ARTICLES

The Law Reporter is unable to supply copies of articles. It does provide addresses of publications that may not be available at your local library.

Alexander, *Opening a Solo Practice*, J. Va. Trial Law. Ass'n, Fall 2003, at 4 (discusses practical steps to take when opening a solo law practice). Contact the Virginia Trial Lawyers Association, 700 E. Main St., Ste. 1510, Richmond, VA 23219.

Brown & Weiner, *Digital Dangers: A Primer on Electronic Evidence in the Wake of Enron*, 30 Litig. 24 (2003) (discusses an attorney's duty to locate and preserve a client's electronic information for discovery purposes in litigation).

Dolan & Julien, *Getting an M.D., the Easy Way*, Hartford Courant, Dec. 15, 2003, available at www.nynewsday.com (discusses how inconsistent licensing laws among states allow graduates from unaccredited offshore medical schools such as Spartan Health Sciences University, St. Lucia, Virgin Islands, to find work in American hospitals).

Henningsen & Whitehead, *Personal Injury: Case Evaluation and Selection*, J. Va. Trial Law. Ass'n, Fall 2003, at 8 (discusses the legal, practical, and ethical steps to take in evaluating and selecting personal injury cases). Contact the Virginia Trial Lawyers Association, 700 E. Main St., Ste. 1510, Richmond, VA 23219.

Olsen et al., *Transmission of the Severe Acute Respiratory Syndrome on Aircraft*, 349 New Eng. J. Med. 2416 (2003) (discusses a study finding that transmission of severe acute respiratory syndrome may occur on an aircraft when infected persons fly during the symptomatic phase of illness).

Pack, *Dilemmas in Attorney-Client Confidentiality*, Wash. Law., Jan. 2004, at 22 (discusses the distinctions between attorney-client privilege and attorney-client confidentiality, and the new rules regarding confidentiality implemented by the American Bar Association and Securities and Exchange Commission). Contact the District of Columbia Bar, 1250 H St. NW, Sixth Fl., Washington, DC 20005-5937.

Sniezek et al., *Rapidly Growing Mycobacterial Infections After Pedicures*, 139 Arch. Dermatology 629 (2003) (reports on a study of nail salon patrons who contracted furunculosis from whirlpool footbath exposure, and recommends that clinicians consider the possibility of rapidly growing mycobacterial infection in a patient with recurrent furunculosis who may have recently had a pedicure).

Varma et al., *An Outbreak of Escherichia coli O157 Infection Following Exposure to a Contaminated Building*, 290 JAMA 2709 (2003) (discusses a study finding that humans may be at risk of *E. coli* infection months after an environment is initially contaminated due to the virus's ability to remain intact on sources other than food and beverages).