

James R. Favor & Company

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FAX / E-MAIL TRANSMISSION RECORD **(PAGE 1 OF 2 PAGES)**

February 6, 2005

Bob Biggs, Executive Director
Phi Delta Theta Fraternity
2 South Campus Avenue
Oxford, Ohio
45056

FAX: (513) 523-9200

E-Mail: bob@phideltatheta.org

Re: Federal Volunteer Protection Act U.S.C 14501
Lloyd's Wins Legal Victory for House Corp. Volunteers

Dear Bob:

To our knowledge, while often asserted on behalf of fraternity volunteers, no court has ever before ruled to dismiss fraternity House Corporation or other volunteers from a liability lawsuit based on the protection they are afforded under the Federal Volunteer Protection Act.

Protection for the volunteers of the fraternity world has always been a keystone of your fraternity risk management program. While various states have laws to protect volunteers, the Federal Volunteer Protection Act became effective June 18, 1997. With notable exceptions (see attached copy of U.S.C. 14501) the act extends freedom from liability to volunteers of nonprofit organizations for their acts or omissions on behalf of their organizations.

In the case outlined below, your underwriters at Lloyd's defended the House Corporation volunteers and as with most fraternity suits the claim was settled before trial. As the fraternity community's longest continuous underwriter, Lloyd's viewed the issue of volunteer protection to be so important to the fraternity community that as a condition of the claim settlement, and at the risk of additional claim payments, Lloyd's insisted that the Summary Judgment Motion on behalf of volunteers be heard and ruled upon by the court. The court granted a Summary Judgment ruling finding that the fraternity House Corporation volunteers were immune from liability under the Federal Volunteer Protection Act.

The Claim Facts:

With 13 members and pledges standing on it, a balcony attached to a fraternity house collapsed without warning. The balcony had been repaired or remodeled approximately two years before by volunteer officers of the local House Corporation. The most seriously injured persons filed a liability lawsuit against various parties.

The President and Vice President of the House Corporation who had planned and supervised the repairs were individually named as defendants in the suit. The suit against the House Corporation volunteer officers alleged negligence for; unsafe conditions, in performing the balcony repairs, violations of building codes and failure to warn of unsafe conditions.

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No architect or engineer was consulted regarding the repairs. No safety professionals were consulted. Licensed contractors did other property repairs the chapter house at the same time. No tests of the balcony were conducted. No warnings signs about the maximum weight or number of persons allowed on the balcony existed. No building permits were obtained. The House Corporation officers and other volunteers performed the work. Giving notice to the above points, defense counsel's evaluation of the case was one of "probable liability".

All of the work performed by the House Corporation officers was within the scope of their duties for the Non-Profit House Corporation. None of them were compensated in any manner for organizing, and supervising and participating in the balcony repair project. After the balcony collapse, the again needed repairs were completed after qualified engineering study by a licensed and insured contractor. Metal support posts were added, and signs were posted on the maximum weight and number of persons to be allowed on the balcony.

Various fraternity volunteers continue to be individually named in fraternity lawsuits. While this case does not establish high legal precedent, we hope you will share this information with your own volunteers and others concerned with these matters. Our firm and our Lloyd's firmly believe this case will be of great value to the fraternity world in the following areas: 1) Reducing liability exposure for volunteers, 1) Aiding in the future defense of volunteers 3) Providing educational information on this important area volunteer concern.

We think this material provides excellent information for your website or magazine. Please give me a call should you, your volunteers, or others have questions in any area.

Very truly yours,



James R. Favor
President

Enclosures

1) As Noted

Cc: Fraternal Law / Bob Manley

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

McDANIEL BROOKMAN,

Plaintiff,

v.

CHI PSI ASSOCIATION OF ALPHA ETA
DELTA, an Oregon non-profit corporation, CHI
PSI FRATERNITY, a Michigan Corporation,
ALPHA ETA DELTA CHAPTER OF CHI PSI
FRATERNITY, an unincorporated association,
ALPHA ETA DELTA OF CHI PSI
EDUCATIONAL FOUNDATION, an
unincorporated association, CHI PSI ALUMNI
ASSOCIATION, an unincorporated association,
DAVID WATERFALL, and BILL STEPHENS,

Defendants.

Case No. 160323014

ORDER GRANTING DEFENDANTS CHI
PSI FRATERNITY, ALPHA ETA DELTA
OF CHI PSI EDUCATIONAL
FOUNDATION, CHI PSI ALUMNI
ASSOCIATION, DAVID WATERFALL,
AND BILL STEPHENS' MOTION FOR
PARTIAL SUMMARY JUDGMENT

Defendants Chi Psi Fraternity, Alpha Eta Delta of Chi Psi Educational Foundation, Chi
Psi Alumni Association, David Waterfall, and Bill Stephens filed a motion for partial summary
judgment. Plaintiff has no objection to the motion. Therefore,

IT IS HEREBY ORDERED that the motion for partial summary judgment as to
defendants Chi Psi Fraternity, Alpha Eta Delta of Chi Psi Educational Foundation, and Chi Psi
Alumni Association is granted; and,

IT IS FURTHER ORDERED that the motion for partial summary judgment of defendants

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1 David Waterfall and Bill Stephens, based on the provisions of the Volunteer Protection Act, 42
2 U.S.C. § 14501 et seq., is granted.

3 DATED this ____ day of January, 2005.

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Lyle C. Velure
Circuit Court Judge

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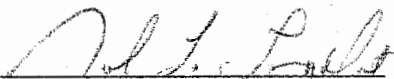
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Presented by:

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John L. Langslet, OSB #72146
Aaron C. Denton, OSB #02289
Of Attorneys for defendants

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FEDERAL VOLUNTEER PROTECTION ACT U.S.C. 14501

LIMITATION ON LIABILITY FOR VOLUNTEERS

- (a) Liability protection for volunteers. Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if:**

 - (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act of omission;**
 - (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;**
 - (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and**
 - (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft or vessel to:**

 - (A) possess an operator's license; or**
 - (B) maintain insurance.**
- (b) Concerning responsibility of volunteers to organizations and entities. Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.**
- (c) No effect on liability of organization or entity. Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.**
- (d) Exceptions to volunteer liability protection. If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:**

 - (1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.**
 - (2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.**
 - (3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.**

FEDERAL VOLUNTEER PROTECTION ACT

U.S.C. 14501

LIMITATION ON LIABILITY FOR VOLUNTEERS

- (4) State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.
- (e) Limitation on punitive damages based on the actions of volunteers.
- (1) General rule. Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.
- (2) Construction. Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.
- (f) Exceptions to limitations on liability.
- (1) In general. The limitations on the liability of a volunteer under this Act [42 USCS §§ 14501 et seq.] shall not apply to any misconduct that:
- (A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;
- (B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));
- (C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;
- (D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or
- (E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.
- (2) Rule of construction. Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).