



ROBINS KAPLAN JUSTICE REPORT

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**WHEN FRIENDSHIP GOES WRONG: USING CIVIL LITIGATION
TO HOLD FRATERNITIES AND SORORITIES ACCOUNTABLE FOR
HAZING**

ROBINS  KAPLAN^{LLP}

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WHEN FRIENDSHIP GOES WRONG: USING CIVIL LITIGATION TO HOLD FRATERNITIES AND SORORITIES ACCOUNTABLE FOR HAZING

BY BRANDON E. VAUGHN



**BRANDON E.
VAUGHN**

Most college campuses across America charter fraternities and sororities. These organizations tout they represent brotherhood and sisterhood and philanthropic ideals. Unfortunately, there can be a very ugly and dangerous side to them: the initiation rituals associated with membership. These rituals often cause those seeking membership (called “pledges”) to subject themselves to embarrassment, harassment, and ridicule, and such rituals place a pledge at risk of emotional and/or physical harm. These acts of initiation are more commonly known as hazing, practices that have accounted for death on a U.S. school campus every year since 1961.

While almost every state has enacted legislation criminalizing hazing, criminal prosecution rarely occurs unless the injuries to the victim are catastrophic or lead to death. Even in those instances, the penalties have seldom resulted in jail time or significant fines. Additionally, the codes of student conduct for most colleges and universities include anti-hazing language that gives these institutions the ability to hold students accountable should they choose to do so. Finally, many fraternities and sororities themselves have adopted anti-hazing policies.

CASE RESULTS

- **\$1.25M SETTLEMENT IN ELECTROCUTION OF A MINOR:** Peter Schmit and Tony Schrank obtained a \$1.25 million recovery on behalf of a minor who was electrocuted while climbing a tree. A power line ran through the tree and came into contact with the tree, causing the tree to be electrically charged as the child was climbing in it. The child sustained burns and muscular pain due to the electrocution. Defendants settled the case after the judge allowed the complaint to be amended to add punitive damages.
- **\$1M SETTLEMENT IN OVERDOSE DEATH OF YOUNG MOM:** In 2014, a 30-year-old mother of two young children went to a Minnesota hospital for uncontrolled back pain and dehydration. Doctors ordered, and nurses administered, multiple opioid medications to control the pain. However, on her third day in the hospital, a hospitalist chose to increase the opioid dose by 97 percent without any increased monitoring – like continuous pulse oximetry. The doctor ordered a new fentanyl patch and doubled her oxycodone dose. Hours later, nurses found her unresponsive in bed. She never regained consciousness and died a few days later. Liz Fors and Chris Messerly obtained \$1 million for the tragic overdose death of this young mom.
- **SETTLEMENT IN HIP DYSPLASIA CASE:** Pat Stoneking and Qortney McLeod obtained a confidential settlement on behalf of a 10-year-old girl who was diagnosed with hip dysplasia several years after she was born, resulting in the need for long-term medical care and permanent disability.
- **\$1.15M SETTLEMENT IN INFANT MEDICATION MISHAP:** Obtained a settlement on behalf of a male infant hospitalized at a Twin Cities hospital who was awaiting surgery to repair a heart anomaly when a nurse negligently administered a large dose of dopamine to the child, rather than the total parental nutrition that had been ordered. The dopamine infusion caused an intraventricular hemorrhage, seizures, multisystem organ failure, and right-sided blindness. The child has mostly recovered from his injuries, but has permanent right-sided blindness. Defense admitted liability but denied the blindness was related. Teresa Fariss McClain, Jen Jones, and Scott Jurchisin reached a \$1,150,000 settlement for the infant boy.



ANTITRUST INVESTIGATION: INTERIOR MOLDED DOORS

Robins Kaplan LLP is co-lead counsel on behalf of a class of indirect purchasers of interior molded doors. Indirect purchaser plaintiffs allege a conspiracy to fix prices among the two primary manufacturers of interior molded doors. Interior molded doors are manufactured from wood slabs and door skins and are used primarily in residential construction and remodeling. Indirect purchasers include, for example, a consumer or business that purchased an interior molded door from The Home Depot or Lowe's for installation in a residence or rental property. The defendants are Jeld-Wen, Inc. and Masonite Corporation. Please contact William Reiss by phone at (212) 980-7408 or by email at WReiss@RobinsKaplan.com if you know or represent an individual or entity who indirectly purchased for their own use, and not for resale, interior molded doors manufactured by either of the defendants in any of the following states or district from October 24, 2012, to the present: District of Columbia, Hawaii, Iowa, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, or West Virginia.

MASS TORT INVESTIGATIONS

Robins Kaplan LLP is currently investigating many new potential cases. Please contact our Mass Tort team if you have any questions or know of any individuals whose case should be evaluated.

- **Premature Hip Implant Failures** – Litigating cases involving DePuy ASR, DePuy Pinnacle, Stryker Rejuvenate, Stryker LFIT COCR V40, Wright Profemur, Wright Conserve, and Biomet M2a-Magnum.¹
- **Farxiga, and Jardiance** – These Type 2 Diabetes drugs can cause ketoacidosis—very elevated blood acid levels—which may require hospitalization.²
- **Roundup** – Exposure to Roundup® has been linked to an increased risk of cancer, including non-Hodgkin's lymphoma, hairy cell leukemia, multiple myeloma, B-cell lymphoma, and lymphocytic lymphoma.³
- **Taxotere** – Studies and reports have associated permanent hair loss (alopecia) with the use of chemotherapy drug Taxotere (docetaxel).⁴
- **Viagra** – Use is associated with increased risk of melanoma.⁵
- **Zofran** – This anti-nausea drug prescribed “off label” for morning sickness is associated with increased risk of cleft palate and congenital heart defects.⁶
- **Whistleblower/False Claims Act** – Cases involving companies who defraud government entities, including unpaid or underpaid obligations, over billing, healthcare, or construction fraud.

1. *Concerns about Metal-on-Metal Implants*, available at www.fda.gov

2. <http://www.fda.gov/drugs/drugsafety/ucm446845.htm>

3. *ARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides*, 2015.

4. See, e.g., Kluger, *Permanent Scalp Alopecia Related to Breast Cancer Chemotherapy by Sequential Fluorouracil/Epirubicin/Cyclophosphamide (FEC) and Docetaxel: A Prospective Study of 20 Patients*, *Annals of Oncology* at 1 (May 9, 2012); Prevezas et al., *Irreversible & Severe Alopecia Following Docetaxel or Paclitaxel Cytotoxic Therapy for Breast Cancer*, 160 Br. J. Dermatology 883-885 (2009); Tallon et al., *Permanent Chemotherapy-Induced Alopecia; Case Report and Review of the Literature*, 63 J. Am. Academy of Derm. 333-336 (2010).

5. Wen-Qing Li, et al. *Sildenafil Use and Increased Risk of Incident Melanoma in U.S. Men: A Prospective Cohort Study*. *JAMA Intern. Med.* (June 2014)

6. M. Anderka et al. *Medications Used to Treat Nausea and Vomiting of Pregnancy and Risk of Selected Birth Defects*. *Birth Defects Res A Clin Mol Teratol.* (Jan. 2012); JT Anderson et al. *Ondansetron use in Early Pregnancy and the Risk of Congenital Malformations – A Register Based Nationwide Cohort Study*. *Pharmacoepidemiology and Drug Safety*. (Oct. 2013).

Despite these mechanisms that attempt to deter and punish individuals for engaging in hazing, the reality is, most incidents of hazing go unreported to authorities. A study conducted on hazing on college campuses reported that 55 percent of college students involved in clubs, teams, and organizations stated they had experienced hazing¹. Furthermore, in 95 percent of the cases where college students identified their experience as hazing, they did not report the events to campus officials.² In short, hazing continues as commonplace on college campuses but is almost never reported.

Because hazing incidents continue regularly at colleges and universities throughout the country, civil lawsuits have become one way to hold fraternities and sororities accountable for the actions of their members. With thorough investigation and some knowledge of the practices to look for, you can establish a pattern and practice of hazing activities within these societies.

The investigation usually begins with an informant, who can be difficult to get. Because of the expectation that hazing activities remain secret, hazers and the hazed typically stay silent. Even victims of hazing who experience catastrophic injury are unlikely to report how the injury occurred. Oftentimes, friends, family members, significant others, teammates, or school personnel are critical witnesses who may ultimately disclose information. It is not uncommon for a victim of hazing to confide in one or more people. The confidant is generally willing to share the details of what they know when they see their loved one has been hurt.

With technology today, there is often a digital trail of the hazing activities, and the sooner you can begin the investigation, the more information you can gather. Looking at social media, email communications, cell phone call records, bank statements and locations of purchases, money transfers, traffic and building cameras, GPS coordinate devices on phones and cars, and other information can help tell the story of hazing activities. Changes in an individual's habits in spending, frequent telephone calls to new numbers (particularly at odd hours of the day and night), changes in demeanor, appearance of sleep deprivation, changes in dress, and a number of other factors can be signs to look for when investigating a hazing case.

Gender is an important factor to consider when investigating hazing. In cases involving men, the hazing activities tend to be more physical and lead to physical injuries that leave a clear sign. Alternatively, in hazing cases involving women, the rituals tend to be more psychological, making an injury less readily apparent because it does not manifest itself with an immediate need for medical treatment.

Unfortunately, catastrophic injuries and deaths continue to occur annually as a result of hazing. In one example, our firm is currently representing the family in the case of a female Division I athlete, where it is alleged she committed suicide as a result of hazing activities of a national sorority.³ Our firm is committed to seeking justice for this family and individuals who are injured and killed by this dangerous and unnecessary activity.

1. Hazing in View: College Students at Risk, Initial Findings from the National Study of Student Hazing; Elizabeth J. Allan, Ph.D. and Mary Madden, Ph.D., March 11, 2008

2. Id.

3. *Hankins v. Alpha Kappa Alpha Sorority, Inc. et al.* venued in the Northern District of Illinois file number 19-CV-0147

THE IMPORTANCE OF MASS TORT STATE COURT LITIGATIONS

BY RAYNA KESSLER

Most laws that affect us are passed by state governments, and thus it's not surprising that state courts handle most disputes that govern our daily lives. Mass tort cases should be no exception, where the vast majority of claims brought rely on remedies provided under state law. In fact, no federal product liability law exists, and instead these claims are brought under state law theories of negligence, strict liability, or breach of warranty.

Of course, this doesn't stop lawyers from filing mass tort claims in federal court, where large number of cases from across the country become consolidated into Multi-District Litigations (MDLs). At the end of 2018, cases consolidated into MDLs constituted 52 percent of civil lawsuits, according to Lawyers for Civil Justice. Overall, more than 200 MDLs are pending in federal courts throughout the United States, comprising nearly 148,000 pending individual cases. Many factors drive the steady increase in federal mass tort claims, not the least of which is the increasing ability of victims to access information and connect with mass tort attorneys via the internet. Significant questions remain as to whether federal courts can handle these incredible caseloads and how quickly an individual claim will be adjudicated.

Since these lawsuits can take place in multiple venues, filing mass tort claims in state court offers an important but often-underutilized alternative. Strategic benefits include states' more favorable discovery rules and the fact that many states do not limit expert testimony to the extent that *Daubert* does in federal court. Federal juries require unanimous verdicts, whereas most states do not. In addition, the heightened federal pleading standards after *Twombly* and *Iqbal* have created another reason to avoid federal court when it's a possibility. Moreover, many state courts have sophisticated procedures for consolidating mass tort cases and directing them to be heard by judges dedicated to the mass tort or other complex litigation dockets. Such complex litigation programs include New Jersey, Pennsylvania, and California. Some of these state courts also provide "trial preference" to litigants who may not survive delays and therefore may provide for a quicker resolution.

The best forum for an individual client's claim is not always clear, and it is common to have multiple viable forums for any particular mass tort case. Therefore, every lawyer must first take time to analyze the claim and make an informed decision with the client about where to file.

Robins Kaplan LLP has extensive experience and success in pursuing mass tort litigations in both state and federal courts, including court-appointed leadership roles in courts throughout the United States. We are happy to assist you and your clients when making the important decision on where to bring a mass tort claim.



RECOGNITION AND AWARDS



**HOLLY
DOLEJSI**



**RAYNA
KESSLER**

HOLLY DOLEJSI, RAYNA KESSLER PROMOTED TO PRINCIPAL

The firm is pleased to announce that Holly Dolejsi and Rayna Kessler have been elected principals.

Holly Dolejsi focuses her practice on representing clients in mass tort cases against some of the country's largest pharmaceutical and medical device companies. She has also been heavily involved in some of the most notable cases handled by Robins Kaplan's National Mass Tort Group, including the Stryker Rejuvenate/ABG II modular hip litigation, which resulted in a settlement valued at over \$1 billion, and federal litigation involving Benicar, which recently settled for \$358 million. She currently is serving as co-lead counsel in the Farxiga MDL, pending in the Southern District of New York, and also actively representing Native American tribes in the federal opioid MDL.

Rayna Kessler is a New Jersey and Pennsylvania attorney in the firm's National Mass Tort Group, where she primarily represents individuals who have been injured by dangerous drugs, medical devices, medical malpractice, or who have experienced other catastrophic personal injuries. Kessler was recently recognized as one of the Top Women in Law in 2016 by *New Jersey Law Journal*, selected by *The Trial Lawyer* as one of America's 50 Most Influential Trial Lawyers of 2016, and named a New Leader of the Bar by *New Jersey Law Journal* in 2018. She also serves as a board member for Public Justice, a nonprofit legal advocacy organization that protects consumers, employees, civil rights, and the environment.



**BRANDON E.
VAUGHN**

BRANDON VAUGHN APPOINTED CHAIR OF RECRUITING/HIRING COMMITTEE, NAMED A 2019 DIVERSITY LEADER BY *PROFILES IN DIVERSITY JOURNAL*

Brandon Vaughn has been appointed chair of the Recruiting/Hiring Committee. A longstanding member of the committee, as chair, Vaughn will manage the firm's entry-level hiring and summer associate program.

We are also pleased to announce that Vaughn has been named a 2019 Diversity Leader by *Profiles in Diversity Journal*. The Diversity Leader award is presented annually to both the organizations that have supported advancements in diversity and inclusion and to the individual diversity officers who have helped their organization succeed. Vaughn is one of just 24 honorees selected from a nationwide pool of candidates.

Vaughn, a principal in the firm's Minneapolis office, has served in various leadership roles in the firm and in professional organizations. Vaughn successfully increased Robins Kaplan's participation in a clerkship program offered by the nonprofit Twin Cities Diversity in Practice and regularly provides career counseling to associates of color and young attorneys. Among his many other volunteer efforts, Vaughn has been involved with Big Brothers Big Sisters and participates annually in workshops for Just the Beginning Foundation's Summer Legal Institute for high school students in the Twin Cities.



**CHRIS
MESSERLY**

CHRIS MESSERLY NAMED "LOCAL LITIGATION STAR" BY *BENCHMARK LITIGATION*

Benchmark Litigation has recognized Robins Kaplan LLP as a highly recommended litigation firm in Minnesota and Chris Messerly as a "Local Litigation Star."

Messerly, partner at the firm, has spent more than 30 years representing families and individuals who have been injured in cases involving medical malpractice, personal injury, and product liability.

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