

## UA Fraternity Not Liable to Guest for Assault

The Eleventh Circuit Court of Appeals has held that the University of Alabama chapter of Sigma Nu fraternity, its members, and the national fraternity, had no duty to protect an invited guest from a criminal attack by a third party. *Wilder v. Sigma Nu Fraternity, Inc.*, 2010 U.S. App. LEXIS 16221 (11th. Cir. August 3, 2010). The case illustrates the difficulty under Alabama law of holding a premises owner civilly liable for injuries sustained as a result of criminal conduct by a third party.

In this case, the Sigma Nu chapter was having a fraternity party at its house on the University of Alabama campus. Two uninvited males entered the fraternity house. The uninvited males were removing beers from an ice maker when they were confronted by an officer of the fraternity who demanded to know their identity and whom they knew in the fraternity. In the ensuing fracas, one of the uninvited males, Kenneth Gipson, threw the first punch and then pulled a knife. The two uninvited males then exited the fraternity house. As they reached the street, Gipson threw a beer bottle into the crowd of invited guests who were watching the confrontation. The crowd responded in kind. In the resulting melee, the plaintiff was stabbed in the head by Gipson and seriously injured.

The plaintiff sued the local Sigma Nu chapter as well as the national fraternity, claiming they owed a duty to protect him from Gipson's criminal assault. The Court disagreed. The Court noted that Alabama law "has rarely held that the danger to an invitee posed by the potential criminal act of a third person was so imminent that the premises owner should have foreseen the eventual consequence." Alabama law requires that three conditions be present before such a duty will be imposed: "First, the particular criminal conduct must have been foreseeable. Second, the defendant must have possessed 'specialized knowledge' of the criminal activity. Third, the criminal conduct must have been a probability." *Wilder* at 5-6. The Court held that the circumstances of this case did not satisfy these conditions.

The Court in *Wilder* noted the previous Alabama case of *New Addition Club, Inc. v. Vaughn*, 903 So.2d 68 (Ala. 2004). In *New Addition Club*, the plaintiff's decedent was murdered by a bar patron. The plaintiff introduced evidence indicating the bar had prior knowledge that the patron had brandished a shotgun at the bar, had beaten up his girlfriend in the bar's parking lot, and was known to be "hot tempered." The Alabama Supreme Court ruled as a matter of law in *New Addition Club* that the bar was not under a legal duty to protect the plaintiff's decedent from the criminal conduct of the bar patron. In commenting on *New Addition Club*, the *Wilder* Court noted,

[A]s in *New Addition Club*, knowledge about temperament and weapons does not create the probability of a particular type of criminal activity. Any fraternity member's knowledge that Gipson was a hostile, armed individual does not indicate that he should have known the probability that Gipson would stab a bystander in the head during Gipson's exit. *Wilder* at 11.

*Wilder* indicates the challenge faced by plaintiffs in such cases. While it is possible to show that an owner or occupier of premises may in some circumstances have a duty to protect an invitee-victim from the criminal conduct of a third party, the evidential bar that the invitee-victim must get over to establish that duty has been set very high by the courts of Alabama.