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NEWS ALERT

APPELLATE PRACTICE

Connecticut Supreme Court Considers Schools' Duty Of Care To Students Participating In Travel Abroad Programs

By Jennifer Morgan DelMonico | April 24, 2017

ARGUMENT RECAP: MUNN V. THE HOTCHKISS SCHOOL, SC 19525

*The Connecticut Supreme Court heard oral argument this term in **Munn v. The Hotchkiss School** to decide whether Connecticut public policy supports imposing a duty on a school to warn about or protect against a serious insect-borne disease when it organizes a trip abroad.*

The case arises from a month-long trip to China organized by Hotchkiss, a private secondary boarding school. Eighteen students went on the trip, including 15 year-old Cara Munn. While in China, Munn contracted a serious tick-borne disease that left her with catastrophic physical and mental disabilities, including the inability to speak. According to the CDC, Munn was the first reported case of tick-borne encephalitis (TBE) in a U.S. traveler to China.

Munn sued Hotchkiss in federal court for negligence. She claimed that Hotchkiss failed to warn her of the risks of tick-borne diseases and failed to require her to wear protective clothing or apply insect repellent. The jury awarded the plaintiff $41.5 million in damages for her injuries.

Hotchkiss appealed to the Second Circuit on various grounds, including the foreseeability of the harm to Munn and the scope of Hotchkiss' duty to warn and to protect students in these circumstances. The Second Circuit determined that the harm here was foreseeable. Foreseeability is not enough to impose a legal duty, however. Public policy must also support the imposition of a legal duty. Because this question of state law was unresolved in Connecticut, the Second Circuit certified two questions to the Connecticut Supreme Court: (1) Does Connecticut public policy support imposing a duty on a school to warn about or protect against the risk of a serious insect-borne disease when it organizes a trip abroad? (2) If so, does an award of approximately $41.5 million in favor of the plaintiffs, $31.5 million of which are non-economic damages, warrant remittitur?

In evaluating whether public policy supports the imposition of a duty, the Connecticut Supreme Court considers four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions.

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Munn argues that these public policy factors require the Court to recognize that schools, as custodians of children, have a broad duty to warn and protect the students in their care. In the context of school trips, this duty extends to risks identified in governmental advisories, no matter how remote.

Hotchkiss acknowledges that schools have a general duty to protect their students, but argues that the duty does not extend to harm that is "undeniably remote." Foreign travel involves countless risks, many of which are foreseeable but extremely remote. In its brief, Hotchkiss gives many examples of such risks, including an earthquake in the Himalayas, a tsunami in Japan, a hotel fire in a country with lower safety standards, or a nuclear power plant disaster. Requiring schools to identify, warn about, and protect against such "undeniably remote" risks would be extremely burdensome and would entail an unacceptable amount of risk. As a result, schools would provide far fewer educational travel opportunities for their students, to the detriment of the students.

At oral argument, the justices seemed to be most interested in the "remoteness" issue, with both parties receiving questions about the remoteness of the risk at issue in this case, and the burden on the school to warn about and protect against that risk.

The Connecticut Supreme Court also heard argument on the second question certified to it: whether the jury's award of $41.5 million, including $31.5 million of non-economic damages, warrants a remittitur. The basic test in Connecticut for reviewing the amount of a jury verdict is "whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury [was] influenced by partiality, prejudice, mistake or corruption . . ." However, the Connecticut Supreme Court has not set specific criteria for evaluating whether a jury award is excessive.

At oral argument, the Court inquired whether it would be appropriate for it to order a remittitur where it was "three steps removed" from that decision, since a jury had already awarded damages and the trial judge had already upheld the damages award. The Court also asked questions to better understand not only how the verdict shocks the conscience, but how it compels the conclusion that the jury was influenced by improper factors.

This case will be closely watched by the over 450 private schools in Connecticut, as well as the many colleges and universities, camps, and other organizations that provide educational and recreational opportunities for children and teenagers on trips and in nature. The Court's decision will have far-reaching effects on the availability of such trips and programs, and the ability of Connecticut's youth to participate in such trips and programs to learn important practical and life skills, develop independence, and develop a sense of responsibility.

We will continue to monitor and provide updates on this important case.

If you have any questions about the information contained in this bulletin, please contact: Jennifer Morgan DelMonico at 203.772.7735 or jdelmonico@murthalaw.com

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