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Connecticut Supreme Court Issues Decision in *Munn v. Hotchkiss*

On Friday, the Connecticut Supreme Court issued its long-awaited ruling in *Munn v. Hotchkiss School*, the case involving a private school student who contracted tick-borne encephalitis on a school-sponsored trip to China. In its ruling, the Supreme Court found unanimously that 1) the state's public policy supports imposing an affirmative duty on schools to warn about and protect against the risk of insect-borne diseases and 2) an award of \$41.5 million for the breach of that duty fell within the limits of just compensation.

Cara Munn was a 15-year-old student who participated in a school-sponsored trip to China in 2007. The itinerary for this trip included a visit to Mount Pan, located in a forested region of northeast China. Upon descending the mountain on foot, the student suffered several insect bites, and ten days later, began to experience symptoms of tick-borne encephalitis. Though her condition subsequently stabilized, the student suffered permanent brain damage and has lost the ability to speak and has limited control of her facial muscles. The student and her family sued the school for negligence. Following a 2013 jury trial, a federal district court in Bridgeport found the school negligent for failing to warn the student and her parents about the remote possibility of insect-borne diseases and ordered the school to pay \$41.5 million in damages—\$31.5 million of which was for non-economic damages such as pain and suffering. The school appealed. In August 2015, the Second Circuit found that the student's injuries were foreseeable; however, the court requested guidance from the Connecticut Supreme Court on two specific issues: 1) whether state public policy imposed a legal duty on schools "to warn or protect against the foreseeable risk of a serious insect-borne disease when organizing a trip abroad and, if so, 2) whether the jury's damages award, particularly the noneconomic portion, warranted [vacation of or reduction in the jury's damages award]."

Regarding the first question, the Connecticut Supreme Court concluded that schools have an affirmative duty to warn and protect students in their care against foreseeable insect-borne diseases. In doing so, the Court considered four factors. First, it looked at normal expectations of participants in school-sponsored, international trips and found that, "[g]iven the potential dangers posed by serious insect-borne diseases, the existence of methods by which to avoid such diseases and the availability of useful information about them, trip participants naturally would expect the organizer of the trip to pass along appropriate warnings, and to use ordinary care to minimize the disease risks posed by the insects in the particular areas

to be visited.” Though the Court was clear to note that a school’s duty to protect students is not limitless, as schools cannot be “an insurer of safety” for all students, it did articulate an expectation that a school exercise the same degree of caution that “a parent of ordinary prudence would exercise under comparable circumstances.”

The Court next looked at the public policy of encouraging educational travel, while weighing safety. The Court cited the benefits of travel, while also acknowledging that travel “will always entail certain risks, some of which cannot be eliminated or reduced.” Nonetheless, the Court rejected the school’s argument that imposing a legal duty to warn and protect against insect-borne diseases would discourage participation in such travel and found that the duty would promote the safety of students “by ensuring that appropriate warnings are given and appropriate protective measures are taken.”

Next, the Court considered the potential of increased litigation due to the recognition of a legal duty to warn and protect against foreseeable dangers posed by insect-borne diseases during educational travel. In finding such potential unlikely, the Court reasoned that “the duty to warn students about and to protect them against, foreseeable insect-borne diseases is but one specific aspect of the already-well-established general duty of schools to take reasonable measures to ensure the safety of the minors over whom they have assumed custody.” In short, the Court concluded that increased litigation was unlikely because its conclusion does not “recognize[e] a new cause of action or otherwise break [] new ground....” Finally, the Court evaluated similar decisions from other jurisdictions and found “them largely unhelpful.” As such, the Court concluded that the last factor was “essentially neutral,” as there was not a case truly analogous to the factual circumstances presented by the case. Additionally, the Court considered and ultimately rejected the school’s argument that a duty to warn and protect should not exist due to the remoteness of contracting tick-borne encephalitis. The Court found that “[a]lthough, in a given case, the rarity of a particular illness should be weighed by the jury when determining whether its contraction was foreseeable, or whether the warnings given and protective measures taken by a school satisfied the duty of care, it is not relevant to a public policy analysis....”

Regarding the second question involving the amount of monetary damages, the Court found no legal basis to set aside or reduce the jury’s award. As an initial point, the Court highlighted that “there was no allegation that the jury in this case was prejudiced, incompetent or otherwise compromised, but only that its verdict was improperly large.” Accordingly, the Court deferred to the jury’s verdict noting that “[i]n only the rarest of circumstances should the size of a verdict, standing alone, warrant setting aside that verdict.” Next, the Court noted the physical effects of the student’s injuries, as her psychological condition would likely worsen as she aged. Further, the Court found the student’s injuries “uniquely cruel” given the “loss of executive brain function that allows [her] to access and use intelligence, while at the same time retaining such intelligence...” and the resulting social isolation. Lastly, the Court noted the impact of the student’s injuries on her ability to pursue her prior “enjoyments and aspirations....”



By addressing the foregoing questions in detail, the Court provides the Second Circuit with sufficient guidance to render a decision in the pending appeal, while putting schools on clear notice of their legal obligations under the state's negligence laws with respect to remote harms such as insect-borne diseases. Nevertheless, the Court emphasized that the duty to warn and protect does not guarantee absolute safety, nor does it require that every possible precautionary measure be undertaken, "[r]ather, the scope of the duty necessarily will vary, depending on the risk posed by the particular insect-borne illness at issue, the ages of the participants in the school-sponsored trip, and all of the attendant circumstances." Accordingly, it is critical that schools seek counsel in advance of educational trips in order to minimize their exposure to a negligence claim.

The full text of the court's decision may be found at: <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR326/326CR97.pdf>.

Questions or Assistance:

If you have any questions about the *Munn* decision, please contact Julie C. Fay at jfay@goodwin.com or 860-251-5009 or Melika S. Forbes at 203-324-8159 or mforbes@goodwin.com.

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