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## Second Circuit Upholds Ruling in *Munn v. Hotchkiss*

On February 6, 2018, the Second Circuit dismissed the remaining appellate claims in *Munn v. Hotchkiss School*, the case involving a private school student who contracted tick-borne encephalitis on a school-sponsored trip to China. When this case was last at the Second Circuit in August 2015, the court held that there was sufficient evidence for the jury to find that the student's injuries were foreseeable. However, at that time, the Second Circuit also decided that the pending appeal involved two issues directly related to state law and therefore certified the following two questions to the Connecticut Supreme Court for guidance: 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, fell outside the limits of just damages, warranted [a reduction of the award]."

In August of 2017 [see <http://www.shipmangoodwin.com/connecticut-supreme-court-issues-decision-in-munn-v-hotchkiss>], the Connecticut 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) there was no legal basis to set aside or reduce the jury's award of \$41.5 million. Having received this decision from the Connecticut Supreme Court, the Second Circuit turned to the four remaining arguments put forward by the school and, finding them to be without merit, has now affirmed the judgment of the district court.

In doing so, the Second Circuit panel found that: 1) it was not an abuse of discretion to allow in the testimony of the plaintiff's expert witness on the standard of care, or to exclude the testimony the defendant's expert; 2) when taken in its entirety, the jury instruction on foreseeability was not misleading as to Connecticut's law; 3) there was sufficient evidence for the jury to conclude that plaintiff was bitten in the location that she claimed; and 4) it was not an error for the district court to exclude a waiver signed by the student and parent purporting to release the school from liability for claims resulting from the school's "sole negligence."

On this last point, the school had conceded that the waiver did not, in fact, release the defendant from liability. However, the school had sought to introduce the waiver to support the argument that the father should also be responsible for contributory negligence. The Second Circuit and the district court relied on Connecticut Supreme Court precedent in finding that



the state doctrine of parental immunity, which prohibits unemancipated minors from suing for injuries caused by their parent, also prevents defendants from apportioning liability to a parent for “negligent supervision” of a minor plaintiff.

The school’s sole remaining avenue for relief in this case is now the United States Supreme Court. Unless and until that happens, however, this case continues to be a cautionary warning for schools that public policy in Connecticut will require that they exercise due diligence in the care of students, which includes a duty to assess and take actions to avoid foreseeable risks, in order to avoid liability for injuries that may occur.

Click to view the Second Circuit panel’s summary decision [[http://www.ca2.uscourts.gov/decisions/isysquery/444e9c5c-8351-40cf-bd18-3c7ca1459221/1/doc/14-2410\\_so.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/444e9c5c-8351-40cf-bd18-3c7ca1459221/1/hilite/](http://www.ca2.uscourts.gov/decisions/isysquery/444e9c5c-8351-40cf-bd18-3c7ca1459221/1/doc/14-2410_so.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/444e9c5c-8351-40cf-bd18-3c7ca1459221/1/hilite/)]. The full text of the preceding decision from the Connecticut Supreme Court 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](mailto:jfay@goodwin.com) or 860-251-5009 or Natalie S. Wagner at 860-251-5613 or [nwagner@goodwin.com](mailto:nwagner@goodwin.com).

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