

Munn v. Hotchkiss School (SC 19525)

Brief Summary: Plaintiff contracted a tick-borne encephalitis on an educational trip to China organized by the defendant school. Prior to the trip a school employee viewed on the US Center for Disease website a warning regarding tick-borne encephalitis in forested regions of China. Court held that (1) the public policy of Connecticut does not preclude imposing a duty on a school to warn about or to protect against the risk of a serious insect borne disease when organizing a trip abroad and (2) the awarded \$41.75 million in damages, of which \$31.5 million constituted noneconomic damages, was not excessive as a matter of law.

The plaintiff, Cara Munn, a fifteen-year-old student at Hotchkiss attended an educational trip to China organized by the school. She contracted tick-borne encephalitis (TBE), a viral infectious disease that attacks the central nervous system, as a result of being bitten by an infected tick during a hike on Mount Panshan, located in a forested area approximately sixty miles from Tianjin, a city in northeastern China. Prior to the trip, David Thompson, the director of the school's international programs, viewed the page on the CDC website directed at travelers to China. The website stated that tick borne encephalitis occurs in forested regions in northeastern China and in South Korea. Furthermore, it instructed travelers to use insect repellent containing the chemical compound DEET and to wear long sleeves and long pants when outdoors. Nobody from the school warned the students or their parents of the presence of TBE nor did they advise the students to wear clothing to protect against insect bites or to apply insect repellent. The plaintiff filed a diversity action in the United States District Court for the District of Connecticut alleging that the defendant was negligent in failing to warn students and parents of the risk of exposure to insect borne diseases and failing to ensure the students took protective measures against insect bites while visiting Mount Panshan. The jury awarded the plaintiff

\$41.75 million in damages. On appeal, the Second Circuit agreed with the plaintiff that there was sufficient evidence presented at trial for the jury to find that her illness was foreseeable.

However, the Second Circuit found insufficient guidance under Connecticut law and certified to the Supreme Court of Connecticut the issues of: (1) whether Connecticut policy supports 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? And (2) whether the award of approximately \$41.5 million, \$31.5 million of in noneconomic damages, warranted a remittitur? The court held that imposition of such a duty is not contrary to Connecticut public policy and that the damages were not excessive as a matter, thus, not warranting a remittitur.

To determine whether one had a duty of care to another the inquiry is whether the specific harm alleged by the plaintiff was foreseeable to the defendant. The test is (1) whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result; and (2) on the basis of a public policy analysis, whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case. The court considers the following four factors when determining if public policy suggests imposing a duty: (1) the normal expectations of the participants in the activity; (2) the policy of encouraging participation in the activity, while weighing the safety; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions. Thus, to resolve the first issue the court weighted these four factors.

Regarding the first factor the court stated that insect borne disease poses a significant threat to humans and information regarding these diseases directed at travelers is easily accessible. Thus, it concluded that the normal expectations of participants in a school trip abroad

involving minors, are that the organizer of the trip would take reasonable steps to warn participants and their parents about the serious diseases present in the area they are visiting and to protect the children from them. Thus, the court concluded that the first factor supported imposing a duty on a school organizing a trip to warn students about and protect against insect borne diseases.

The court then looked at the policy of encouraging participation. It stated that educational trips abroad are supported by Connecticut public policy. However, it disagreed with the defendant that imposing a duty to warn and protect from insect borne diseases will have a chilling effect on such travel. Instead, the court reasoned imposing a duty will encourage participation by ensuring that the organizers are giving appropriate warnings and implementing appropriate protective measures. Essentially, imposing a duty promotes safety on trips abroad, thus, encouraging participation on such trips. Thus, the court concluded the second factor supports imposing a duty.

Regarding the increased litigation factor, the court stated that imposing a duty does not create an open and shut case for every potential plaintiff contracting an insect borne disease on an educational trip as duty is just one of the four required elements for negligence. Also, principles of comparative negligence still apply in such a case. Thus, the court concluded that it is purely speculative to state that imposing a duty will “open the floodgates to a wave of litigants who will inevitably prevail.” Further, it stated that imposing a duty regarding insect borne illnesses is just a specific aspect of the already well-established duty of schools to take reasonable measures to ensure the safety of minors in their custody. Thus, there is no issue of increased litigation here as there is when the court recognizes a new cause of action. For these reasons, the court concluded that the third factor supports imposing a duty.

The court concluded that the fourth public policy factor, the decisions of other jurisdictions, is neutral because research revealed no truly analogous case to the present one.

Therefore, because three of the public policy factors favored imposing a duty on school trip organizers to warn and protect students from insect borne diseases, the court concluded that such a duty was in accordance with Connecticut public policy. The court then addressed the issue of damages.

The test for whether damages are excessive as a matter of law is whether the jury's award falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption.

To determine whether the damages were excessive as a matter of law the court discussed the extensive harm suffered by the plaintiff due to the disease. For example, being unable to work, move her fingers fully and suffering from compromised brain function. Although her verbal comprehension scores remained in the ninety-sixth percentile, her reading, math comprehension and perpetual reasoning scores fell to the third, fifth and twelfth percentiles, respectively. Thus, she remains intelligent but unable to use it. The court noted that this made her injuries particularly cruel because she knows what she lost, cannot express the loss, and is treated as if she had lost more. In finding that the damages were not excessive the court also noted that there was no allegation that the jury was prejudice or incompetent and that the plaintiff was very young and thus, expected to suffer for a prolonged period. Therefore, the court concluded that the damages were not excessive as a matter of law.

The concurrence by Justice McDonald stated that the current remittitur jurisprudence is inconsistent and fails to provide clear guidelines as to what constitutes an excessive verdict. Justice McDonald pled to the legislature to provide further guidance on the standards that govern a court's decision to grant or deny a remittitur motion because there are four distinct and potentially contradictory standards that have been applied in Connecticut.

In the other concurrence, Justice Espinosa expressed hope that the appeal court will revisit its determination that there was sufficient evidence to support the jury's finding that the injuries suffered were reasonably foreseeable. Justice Espinosa argued that the plaintiff's injuries were not reasonably foreseeable enough to impose a duty on the school because of how rare it is for a foreign traveler to contract tick-borne encephalitis. Furthermore, Justice Espinosa calculated that the plaintiff had "less than a one in two million chance" of contracting the disease on the trip, thus, concluding that there was no basis for the jury to reasonably conclude that the harm was likely or probable.

The key take-away from this case is that Connecticut policy does not preclude imposing a duty on a school to warn about or to protect against the risk of a serious insect borne disease when organizing a trip abroad. Imposing such a duty is salient because it protects students from potentially life changing injuries by assuring that they are informed of the risks of going on the trip and assures the school takes measures to mitigate the risk such as requiring students to wear long sleeves and pants while in an infectious area.