

Tick Bite Leads To Big Verdict

PREP SCHOOL LIABLE FOR \$41.7 MILLION AFTER STUDENT CONTRACTED VIRUS IN CHINA

By **THOMAS B. SCHEFFEY**

Upscale Connecticut boarding schools, like the Hotchkiss School in Litchfield County, can offer students some extraordinary experiences. In 2007, for instance, a group of Hotchkiss students who had been studying the Chinese language embarked on a five-week trip to China. For many, no doubt, it was a life-changing experience.

That could be said for Cara Munn, who was 14 at the time. Except her life changed permanently for the worse. Munn contracted encephalitis — a tick-borne virus that causes swelling of the brain. It left her with very limited control of her limbs and unable to speak, though she has been able to attend college in recent years.

In one of Connecticut's largest personal injury verdicts, a federal court jury on March 27 awarded the now 20-year-old New York woman \$41.7 million after deciding Hotchkiss School, in Lakeville, was negligent in not preventing her from contracting encephalitis. Specifically, the school was faulted for not warning Munn and her parents that she would be traveling in mountainous and forested terrain. As a result, the jury found, she did not realize she had to protect herself from insect bites with repellants, long-sleeved shirts and trousers, and by avoiding brushy undergrowth.

Antonio Ponvert, of Bridgeport's Koskoff, Koskoff & Bieder, represents the Munnns. The girl was awarded **See PLAINTIFFS on PAGE 12**

\$350,000 for her medical care to date, and an additional \$100,000 to cover the medical evacuation costs of flying her back to the U.S. from China. She was awarded \$9.8 million for future lost earnings and future costs of care. Non-economic damages awarded were \$31.5 million for mental and emotional suffering and loss of life's enjoyment, for a total of \$41,750,000.

"She's had to undergo over 500 separate medical treatments with scores of specialists in rehabilitation therapy, and will need extensive care for the rest of her life," Ponvert. "She's been rendered permanently unable to speak. She's a very intelligent, wonderful person with a lot going on inside her head. She scores on standardized tests about 96th percentile on verbal comprehension, but on verbal expression she

has none. She can't speak."

Cara has problems with motor skills as well, he said. Further, her condition "affects her ability to plan and deal with the chronology of events and get through the day in an organized fashion."

Wrong Link

During the eight-day trial before U.S. District Court Judge Stefan Underhill, the jury learned that the school trip was billed as visits to three urban centers, Beijing, Shanghai and Tianjin. There was no mention of traveling in the heavily-forested Mt. Pashan (commonly called Mt. Pan) region, about 100 kilometers north of Tianjin.

In the planning literature, the school provided a link to the portion of the federal Centers for Disease Control and Prevention website that listed foreign travel health advisories. But the actual link provided offered information on South American locales, Ponvert said. A correct link, the attorney said, would have brought students to a part of the website that identified northeastern areas of China as being risk areas for encephalitis, Lyme disease and other insect-transmitted diseases.

Ponvert contended at trial that even if Munn or her parents had accessed the CDC website for China, they would not have been properly warned because they did not know the students would be traveling outside of urban areas, which were not covered by the CDC advisory.

"The claim against the school was that they were negligent in doing two things," Ponvert said. First, "they were negligent in failing to inform Cara about the risk of disease, and they were negligent in failing to insure that she would take really basic safety precautions against the risk of insect-borne illness."

Munn's tick-borne encephalitis was "easily preventable," according to Ponvert. Other youngsters in the group were affected by insect bites, according to the complaint, but none as severely as Cara Munn.

Hotchkiss is being defended by Penny Q. Seaman, of the New Haven office of Wiggin and Dana. Seaman had not responded to phone calls or emails requesting comment by late last week.



In her closing arguments March 26, Seaman argued the injury was unforeseeable. "Insect-borne diseases, such as what Cara developed while she was in China, were unprecedented and unforeseeable in travelers to Tianjin China in 2007," she said.

Seaman emphasized the care and devotion of trip leader Jean Yu, who made breakfast every morning for the 20 young travelers "because they didn't like China breakfast food." The Hotchkiss Chinese-language students were reminded by Yu to bring their insect repellent every time they went outside, Seaman said, "not because she was worried about a disease, but because she didn't want them to be aggravated by bug bites." Hotchkiss employee Yu, said Seaman, "is nothing if she is not a conscientious teacher."

'Five-Star Attraction'

On the day Munn is believed to have contracted the disease, the students drove to a parking lot at the base of Mt. Panshan before going up to its summit in a gondola.

Cara Munn and two other students asked to walk down unaccompanied. Yu, after careful consideration, assented, Seaman said. Yu was a native of the nearby city of Tianjin, and returned there twice a year. She had never heard of any problem with insect-borne disease, and found none in her Internet searches in preparation for the trip, Seaman reminded the jury.

The plaintiffs, said Seaman, "want you to believe that Mt. Pan, a five-star tourist attraction with some 600,000 visitors a year, was invested with infected ticks. That is simply not credible."

While acknowledging "there are probably bugs," Seaman argued, "But there's a huge TV in the parking lot, there's a hotel and concession stand at the top there, as well as a well-maintained, beautifully landscaped busy stone pathway With all of these visitors, it is hard to imagine that there would be a real risk of insect-borne disease."

Seaman said that if the jury found for Munn, it will mean that high school soccer coaches will think they have to insect-spray their teams before letting them out of a bus.

Reluctantly discussing damages, Seaman acknowledged that Munn is likely to earn less than her Hotchkiss peers, according to expert testi-

mony — perhaps only \$25,000 a year. She noted that economist Gary Crakes' estimate of Munn's life care costs includes \$5.9 million for a life care coach, five hours a day. Seaman painted Munn's life as fairly normal: "This independent young woman, who returned to dorm life within seven months of her illness, who lives in a dorm at college, who has traveled, writes for her school newspaper, takes a full college load, needs someone to shadow over her for five hours a day?"

Ponvert, in his rebuttal, said the mountain's five-star rating as a tourist attraction "means absolutely nothing in this case [because] the fact there's a television screen in the parking lot does not mean there isn't a dense forest 200 yards away."

Ponvert said there was no testimony that Jean Wu "knew where these kids were" as they hiked down the mountain. "Cara did testify about red welts on her arm and other bites after the hike," Ponvert said.

He finished up by referring to Cara Munn's 66-year life expectancy. "All of us are going to need more care when we're in our 60s, 70s and 80s, but Cara, because she's brain damaged," is unlikely to have a husband to care for her, and is "going to need more help when she gets older." To suggest that her needs can be measured by her medical needs in the past six months, said Ponvert in closing, "is irresponsible."

The case went to the jury at 1:15 p.m. on March 26. A verdict was returned at about 1:30 on March 27.

The jury found against the school on all seven jury questions, establishing a negligent failure to warn. It concluded that Munn proved by a preponderance of the evidence that she had contracted the tick-borne disease while hiking on Mt. Pashan. It also concluded that the negligence of Hotchkiss employee was a substantial factor and the proximate cause of Munn's injuries.

During deliberations, the jurors wanted a clarification of the "cause in fact" portion of the jury instructions. "It's clear they were paying close attention to the instructions in the verdict form," said Ponvert, who tried the case with the assistance of paralegal Linda Grossberg, who sat "second chair" at the plaintiffs table. ■



Attorney Antonio Ponvert said his client, now 20 and attending college, has encephalitis, a swelling of the brain that has robbed her of her ability to speak and full use of her limbs.

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