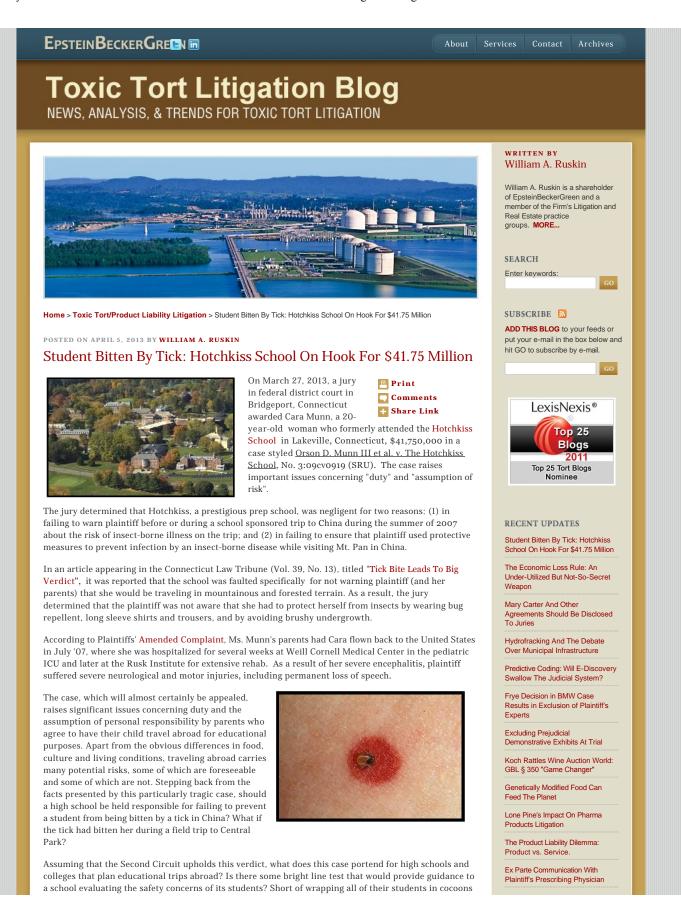
Student Bitten By Tick: Hotchkiss School On Hook For \$41.75 Million: Toxic Tort Litigation Blog





and keeping them closely monitored in classroom settings, how can any school protect against the kind of unforeseen liability presented by this case?

Hotchkiss' Answer to Plaintiffs' Amended Complaint states that plaintiffs' claims should be barred by the doctrine of assumption of risk. The school argues that plaintiffs voluntarily assumed the risk of travel to China as evidenced by their execution of the pre-trip Agreement, Waiver, and Release of Liability. In this agreement, plaintiffs agreed that Hotchkiss "would not be responsible for any injury to person or property caused by anything other than its **sole negligence or willful misconduct**" (emphasis added) Would legal weight did the court give to this release?

Based upon the Verdict Form presented to the jury, it would appear that the trial court gave short shrift to the language in the release. The jury was asked the following questions: (1) Was one or more of Hotchkiss' negligent acts or omissions a cause-in-fact of Cara Munn's injuries; and (2) Was one or more of Hotchkiss' negligent acts or omissions a substantial factor, that acting alone or in conjunction with other factors, brought about Cara's injuries?

Those inquiries are a lot different from asking whether the jury finds that Hotchkiss' "sole negligence or willful misconduct" caused the injuries. Although the jury determined that plaintiff did not contribute to any degree whatsoever in causing her injuries, it was not asked to consider whether other intervening factors played any role in causing Cara's injuries.

There are circumstances when a school can and should be held responsible when things go wrong on a school outing. Three examples come quickly to mind: (1) sending kids into a war zone despite State Department warnings; (2) sending kids abroad into an epidemic earlier identified by the CDC; or (3) taking non-swimmers for an ocean swim outing without proper supervision.

How is Munn different from these scenarios? Is a random bug bite as foreseeable, if at all, as the kinds of risks discussed in the three scenarios above. According to Hotchkiss' summary judgment memorandum, the CDC reported that plaintiff was the first U.S. traveler ever to have reported TBE after traveling in China. Moreover, no U.S. traveler since plaintiff has developed the disease. Therefore, how unreasonable was it for Hotchkiss not to take precautions against a risk of harm that arguably had such a slight likelihood of taking place? Shouldn't plaintiffs have had to prove that the defendant was on prior notice of the existence of circumstances that could give rise to an injury?

Plaintiffs' expert, Peter Tarlow once led a group of children, including his own son, on a tour of Israel. If a child on that Israel tour had been unexpectedly assaulted by someone holding anti-Zionist views, would Dr. Tarlow expect to be held responsible for any resultant injury because he was "on notice" of decades of endemic unrest in the region?



Two strong CT trial lawyers squared off against each for this eight day trial-for the plaintiffs, Antonio Ponvert of Koskoff, Koskoff & Bieder, one of the New England plaintiff bar's preeminent firms, and for the defendant, Penny Q. Seaman of Wiggin & Dana, one of Connecticut's oldest and most accomplished firms. The bar should expect to see excellent post-trial briefing as events unfold.



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TAGS: Hotchkiss, Munn v. Hotchkiss, Negligence, Toxic Tort/Product Liability Litigation, assumption of risk, duty, encephalitis, federal district court in Bridgeport, Connecticut, jury award, school sponsored trip to China, school sued over tick bite, tick

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