

Second Circuit

“[I]nternational trips and outdoor activities, while sometimes posing substantial health and safety risks, offer important benefits to their participants.”

Connecticut statutory law:

“It shall be the policy of the state to encourage its students, teachers...to participate in international studies, international exchange programs and other activities that advance cultural awareness...”

Next steps

- ▶ Briefing by Connecticut Supreme Court
- ▶ Oral argument?
- ▶ Ruling
- ▶ Second Circuit review court's opinion and issue its own
- ▶ Could be appealed to U.S. Supreme Court but unlikely
- ▶ Likely to be at least next year before a final resolution

How do you think this will impact other organizations?

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Impact on the industry

- ▶ Second Circuit recognized the potential impact:
 - ▶ “This case is likely to encourage future victims of unusual accidents on educational trips to seek compensation, placing a heavy financial burden on trip providers.
 - ▶ Imposing a duty here “might discourage field trips that serve important educational goals.”
 - ▶ Trips might be curtailed or ceased completely, “depriving children of valuable opportunities.”
 - ▶ Might result in increased insurance premiums
 - ▶ “The size of this award makes it likely that it will have repercussions far beyond this case and affect the whole industry of educational trips.”
 - ▶ But, may make programs safer.

Impact on programs

- ▶ Second Circuit is federal appellate court over New York, Connecticut, other states
- ▶ Second Circuit is very influential
 - ▶ Covers New York
 - ▶ One step down from US Supreme Court
- ▶ But, only involves Connecticut law. Not binding on other states.
- ▶ But other states and courts could adopt the reasoning.

Impact in Connecticut

- ▶ Encouraging litigation: other suit for \$41.7m for Lyme disease contracted at YMCA camp
- ▶ Need insurance to cover that kind of potential loss?
- ▶ Will carriers write it?
- ▶ Can programs afford it?
- ▶ Some may stop offering programs
- ▶ Some may change activities will offer
 - ▶ Give more extensive warnings
 - ▶ Need to be more paternalistic?
- ▶ If not adequately insured, similar jury verdict may put programs out of business

Impact for orgs outside Connecticut

- ▶ Do you solicit and accept participants from Connecticut?
 - ▶ Likely to be sued in Connecticut
 - ▶ Connecticut law likely to apply
 - ▶ Even if you have a forum selection clause and choice of law clause
- ▶ Other states and courts may adopt law and reasoning

What should you do?

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Things to consider:

- ▶ Need to better warn?
 - ▶ Include disease carrying insects and animals
 - ▶ Have more inclusive list of risks in your liability release and acknowledgement of risks form?
 - ▶ But undermines effectiveness of acknowledgement of risks
- ▶ Need to better protect participants?
- ▶ Assess your insurance coverage
- ▶ Keep an eye out for similar developments in your state

Take aways

- ▶ The decision is alarming but we can be hopeful.
- ▶ This is the worst case scenario. Very unusual.
- ▶ Litigation takes a long time.
- ▶ Can be frustrating and feel unfair.
- ▶ Releases are enforceable in most states.
- ▶ Stay focused on running a good program.

Questions?

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