

## Eleventh Circuit Reverses District Court on Application of Noneconomic Damages Cap

July 02, 2014

Yesterday, the Eleventh Circuit issued an order in *Estate of McCall v. USA* reversing the district court's order applying the noneconomic damages cap. The Eleventh Circuit remanded the case for further proceedings consistent with the Florida Supreme Court's opinion in the case, and with the Eleventh Circuit's previous opinion. In its order, the Eleventh Circuit noted that the Florida Supreme Court's decision only applied to wrongful death cases. The underlying case in *McCall* involved a wrongful death suit filed under the Federal Tort Claims Act. The district court determined noneconomic losses from the death to be \$2 million, comprised of \$500,000 for the son and \$750,000 for each parent. Under section 766.118(2), Florida Statutes, the aggregate cap served to limit the parents' and son's recovery to \$1 million. Given the Florida Supreme Court's ruling that the aggregate cap is unconstitutional, the district court will have to decide whether to apply the per person cap of \$500,000 under section 766.118(2)(a) to limit each survivor's recovery to \$500,000 each.

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